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STANDING COMMITTEE ON GENERAL GOVERNMENT

SCHOOL BOARDS AND TEACHERS COLLECTIVE NEGOTIATIONS ACT

MONDAY, MARCH 23, 1987



STANDING COMMITTEE ON GENERAL GOVERNMENT

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From the Grey County Board of Education:

Wright, A., Chairman

McKenna, M. J., Director of Education and Secretary

From the Ontario Association of Education Administrative Officials:

Folliott, D. C., President; Superintendent of Human Resources, Waterloo County Board of Education

Campbell, R. S., Member, Executive Committee; Area Superintendent, London Board of Education

Forsythe, W. G., Member, Executive Committee; Director of Education and Secretary, Wellington County Board of Education

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Monday, March 23rd, 1987

The Committee met at 1:30 p.m. in room 228

Mr. Chairman: Thank you.

Good afternoon and welcome to the Standing Committee on General Government. We are pleased to have you all here this afternoon. We will begin meeting immediately and our first representatives are from Grey County Board of Education, Arlene Wright and Michael McKenna whose is the Director of Education. Ms. Wright is Chairman of the Board. Welcome.

Ms. Wright: Thank you very much, Mr. Chairman.

As stated in the Agenda my name is Arlene Wright. I have been Chairman of the Grey County Board for two years and Trustee on that Board for eight.

A little bit of background of our presentation this afternoon, I believe you have a copy. In the year 1985/86 school year, three weeks after the beginning of the year we had a strike on our hands and it lasted for nine weeks. So we come to you today with a very serious brief and we ask that you consider it, and that you consider what is in this brief. My Director of Education, Mr. Michael McKenna, and I will be pleased to answer any questions following our brief presentation. It is not our intention to read this brief to you, but rather to highlight some of the things in here that we think are very important and valuable.

Grey County, as you are aware, is predominantly rural. We have five secondary schools with slightly under 5,000 students.

We have 25 elementary schools serving 8,500 students. We offer a variety of programs that we feel meet the needs of the local and community and are responsible to the local community. We feel very seriously that Bill 100 needs to be addressed, that there are many things within that Bill that do not serve the purpose of boards of education today.

We have four major considerations that we would ask you to consider, and that is the good faith bargaining. We feel that a definition of good faith bargaining is lacking. We think the role of the fact finder, the duties, the responsibilities of the fact finder must be more clearly addressed. We think there is a limited need for a strike or walk-out and we have suggested time lines. And we feel that the role of binding arbitration or limited offer selection

should be dealt with as well.

I am going to ask the Director to deal with some of the mechanics on these four questions.

Mr. Chairman: Go right ahead, Mr. McKenna.

Mr. McKenna: Thanks, Mr. Chairman.

I draw your attention first to the section on good faith bargaining. That will be on the third page in. We feel there are four fundamental points to good faith bargaining:

One in the first category deals with the need to meet with reasonable diligence. Secondly, to provide relevant information and daily exchange. Third, recognize one another as bargaining agents. And fourth, to avoid intentionally entering into a collective agreement. I think in all the literature regarding negotiating these four points can be found.

We notice --

Mr. Chairman: Mr. McKenna, just a moment.

A point of order, Ms. Bryden.

Ms. Bryden: I appear to be missing page two of the brief. Can I get another copy? Sorry to interrupt, but I could not follow.

Mr. Chairman: You have got the revised one?

Ms. Bryden: I have a copy; is it incomplete.

Okay, thank you.

Mr. Chairman: Sorry for the interruption.

Mr. McKenna: I am still addressing that first section, Mr. Chairman. With the complicated issues now entering into the bargaining process, it is my experience over the past few years that there may be some question as to whether each party at any given time is ready to enter into a meaningful collective agreement through a negotiating process. I think what happens is both parties support a position that quite often says, "Let's wait until provincial trends emerge for either of the two parties."

We feel from our perspective again - both from the Board and teachers' perspectives - that these occurrences may well not parallel the major issue of good faith bargaining. We are fairly realistic in today's climate, however, with the complications that now exist, that the

issue of good faith bargaining may be a moot point.

It is a difficult point to achieve philosophically, we feel that a definitive time line for the whole negotiating process may well offset that weakness, and the last page of our brief I am going to speak to it, presents a time line for the negotiation process.

The second major issue, without getting too technical, from our perspective deals with the fact finding process. We feel from a Board perspective that the fact finding process is of little use to us at this time.

Over the past three or four years, there is a great deal of data available to both parties negotiating through provincial organizations; and as we overview the data made available to us we see a tremendous disparity in the kinds of things that fact finders deal with. Where one fact finder will address a particular issue and working conditions; a second fact finder says, "No, that's not my job." And we feel that in a review of Bill 100 that the job description - or the task description - of a fact finder must be more clearly delineated within Bill 100.

The last two issues on limited sanction and third party intervention in a strike, I think are best addressed by turning to the last page in the brief, which gives a schematic for the negotiating process.

Once again, it is our experience that if we dwell too long on philosophical issues in Ontario the strength of the moment may well pass us. We can spend the next year or two deliberating about philosophical positions when indeed we may be able to solve the issue with some diligent time lines.

Appendix 1 presents Grey County's viewpoint. We start the time line on January 1 of each year, and we go through to the end of September of that same year. Within this time line we recognize the moral, legal and social position of either of the parties to enter into a sanction. And we are not in a position of saying that sanctions do not serve a purpose in Ontario.

Very quickly from the top, the month of January, notice to negotiate. From January 31 through to April the 2nd, sixty days in which to negotiate intensively and with serious purpose. And within that time frame, if either of the two parties so agree, some kind of third party intervention that we have called mediation - for lack of a better phrase - may be possible.

If, at the end of that sixty days, no agreement has been reached, a fact finder is appointed. And within the next 30 days from April the 2nd through to May the 2nd, in

our example, the fact finder will develop a report and then report to both parties.

Within the next ten days, if an agreement can be reached, that agreement can be formalized. But if at the end of that ten days if no agreement is apparent, then we suggest that the fact finder report be published. And if you go back in the text of our brief, we do suggest that that fact finder report have considerable influence on the outcome of the negotiating process from that time on. Otherwise, why have this third party that really in our experience over the past four or five years, or three or four years, simply from our perspective waste time.

From that date, May the 12th on, mediation is possible. And we do suggest that if no agreement has been reached the negotiations continue through the summer and if by August 31st a reasonable settlement has not been achieved then a sanction is invoked. We suggest that a sanction be invoked for a period of not longer than 30 days, at the end of which time there is an imposed agreement.

Now, if you refer back into the text of our rather simplistic brief, we do recognize such issues as a third party's imposed resolution of a sanction situation does not necessarily solve all of the problems or, indeed, perhaps any of the problems, but it does get the critical actors back into the schools with the students and the teachers. We have from that point on an opportunity to use external resources and get into management by objectors or other kinds of assistance to solve the remaining problems.

We realize from our perspective that this is a rather simple solution, but we feel that if we do not take some pragmatic step at this juncture to allow the Province of Ontario to become more realistic about its laws concerning negotiating and sanctions within the educational atmosphere, we may be another series of years before that can really be effective.

I would like to say from an educator's viewpoint, as well, that the basic concern I have in this whole process is where we end up at the end of four, five, six, or in our case nine weeks of sanction. We have students that go on and complete their year and universities accept marks, and the government takes the position that, indeed, nobody's education is at risk.

Our very point is, given the high cost of education, if at the end of four weeks or five weeks or, indeed, nine weeks, universities can accept transcripts from the students in other schools and different people in the province - within the government and outside of the government, at the local level - and say that nothing really has been lost; what does it say about our educational process and the

costs.

Ms. Wright: In summary, then, I would like to take this opportunity to thank you for listening to us. To suggest to you that imposed settlements do not necessarily solve problems and perhaps an imposed time line would be the lesser of the two evils.

In a time of increasing educational costs and in the face of public pressure for greater accountability and equality of education, how much longer can this government or any government support the suspension of classes for our students? For how many weeks, without publicly stating that the education of students is in jeopardy. How can it allow a declaration that missing several weeks of classes for some students constitutes equal opportunity for all students in this province?

We would suggest that a chief executive officer of the board be able to declare that any unnecessary interpretation of the regular learning pattern lasting for weeks be supported by the government and its ministries. That, Members of the Legislature, this is the question that you people will have to answer.

Thank you.

Mr. Chairman: Thank you very much.

We certainly appreciate the fact that you are here today. I should have said at the outset that I am the Acting Chairman for a while on this Committee. I am pleased to be here. We have some questions now, if you are ready.

Ms. Bryden?

Ms. Bryden: Thank you, Mr. Chairman.

I certainly appreciate you coming before the Committee to tell us of your experience because you have had some very definite, concrete illustrations of how the Act works or does not work. I have two or three queries.

First of all, what happened to the students who were deprived of school for the nine weeks? Did any of them lose their year or did they have to do catch up?

Ms. Wright: Go ahead.

Mr. McKenna: Mr. Chairman, we did an internal follow-up of secondary students at the end of the school year and what I am going to quote you is something that I really do not like to use in education -- that is a failure rate. The failure rate was no greater at the end of that year than it had been in the preceding five years.

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The second part of the question: Was there catch-up? The five secondary school principals worked with the department heads in each of the five secondary schools under a set of internally consistent guidelines. The department heads pared everything out of the courses of study for the remaining year that were not defined as part of the core in the subject.

In other words, to use another overused phrase "basic skills" within each subject were supposedly addressed within the remaining time of the school year.

Ms. Bryden: So, that nobody actually lost their year that you can attribute to the strike? There may have been some failures at the end of the year but...

Ms. Wright: I would like to add to that. The social life of the students was non-existent from then on because all field trips were cut from the curriculum and any extra activities that did not deal with the core - as the Director has stated - were cut. And that is very unfortunate, for young people to lose that aspect of their school year.

Ms. Bryden: But they did not have after-hours or weekend extra classes or anything of that sort? That would have cut their social life further, if they had.

My next question is: While initially you thought there should be a definition of "reasonable or good faith bargaining" and then you said maybe a faster time line or shorter time line would eliminate the need for that definition. How does the shorter time line eliminate the need for a clarification of what good faith bargaining is?

Mr. McKenna: I think the issue of good faith bargaining, Mr. Chairman, may be viewed almost totally from the philosophical base because when you try to assign specific phrases to that issue of good faith bargaining, we could be here one long time in trying to agree upon the meaning.

I think as we take a look at the whole issue of negotiating in this day and age, in view of the fact that we are now in an environment where, through litigation, we are deciding who is covered under Bill 100 rather than by government legislation.

When we face the issue of pay equity which will begin to enter into negotiating at the school board level probably within the next two or three years, and I can go on with more complications. The easiest and most pragmatic way may very well be: fix a time line. A time line of eight or nine months to negotiate over a year for next year's contract, I think, is more than reasonable and we will do without the

philosophical dance, given our choice.

Ms. Bryden: So, you would accept a set time limit schedule and try and work it out within that schedule - regardless of whether it is considered good faith or bad faith - it would be bargaining within a time limit.

Mr. McKenna: That is correct, Mr. Chairman.

Ms. Bryden: Just one other question: At what stage did you start to ask for government intervention? That was the way the strike was finally settled, I presume; was it not?

Ms. Wright: No. There was not a settlement by government intervention. And you may not have been aware there was a very active parent group and they started asking for government assistance in about week four of the strike.

Ms. Bryden: But it was finally settled in week nine by the Board and the teachers in deciding that...

Mr. McKenna: Mr. Chairman, if I might. We had the services of an ERC appointed mediator prior to the strike date and then throughout the nine weeks. And I guess if we use the broadest meaning of "government appointed", yes, we did have assistance from the ERC -- an appointed mediator.

Ms. Bryden: At what stage did the Board of Education ask for additional help from the ERC or from the government, say, from the Minister of Education? Did you approach the Minister of Education at any stage?

Mr. McKenna: I approached the ERC in a series of rather direct letters about the whole process and I do acknowledge that I think we were very lucky to get the assistance that we did, and it was good assistance at that.

To answer the question directly, towards the middle of August - when it appeared that we weren't getting back together very quickly at all - we did obtain the assistance of an ERC appointed mediator--

Ms. Bryden: Thank you.

Mr. McKenna: --that both parties agreed to, by the way.

Ms. Bryden: Thank you. Mr. Chairman.

Mr. Chairman: Mr. Johnson?

Mr. Johnson: I, too, Mr. Chairman, had the opportunity to become involved in a teachers' strike in Wellington County during the same time frame. Our strike

lasted even longer than the Grey strike. So, I am well aware of the concerns of the people involved in the strike issue.

I would like to ask you, Ms. Wright, if your Board has made any reference to the Matthews Commission's recommendations?

Ms. Wright: Not within this brief.

Mr. McKenna: We did, as a background research to the brief itself. And our initial position with our brief was one that was about 15 pages long and the more time we spent at it the more technical it became. And when I say "we", Mr. Chairman, I am talking about the administrative staff working with the chair and the vice-chair.

We then said, "What is really the essence here? And what is a pragmatic way to get at the issue?" We chose to go to a much simpler brief. So in substance, yes, we did take a very thorough look at the recommendations of the Matthews Report and our ball game is coming down on a fixed time line for the process.

Mr. Johnson: Mr. Chairman, I wonder at some point in time it would not be beneficial for this Committee to give consideration to reviewing the 49 recommendations made by the Matthews Commission. They have spent a great deal of time - they are certainly credible people - and the report was conducted in 1980, five years after Bill 100 was passed. I think that if we relate not only to Bill 100, but to the Matthews Commission Report, that it may be beneficial to the findings of this Committee. I would like to, it's just a very small point, to clarify the spelling of Matthews. It is spelled with one "t", in some places it is two. It is two "t's"; isn't it?

I have one problem, during our strike in Wellington and Grey it was in a municipal election year; every three years, as you know, we have elections. I do not want to use the term, but for lack of another one we'll say, "lame duck" council or, in this case, school board; does that not create a problem for a board trying to deal, in the midst of a strike, with one group of trustees that are coming off and another group going on? And the people that are coming on do not take office until, into the new year?

Ms. Wright: Yes, it does create a problem. And the new trustees take office December 1.

Mr. Johnson: In fact, I think, it is even going to be compounded now because under the new proposals municipal elections may occur in the third week of October. Now, unless there are some changes the possibility would be that the election would occur in the third week of October and if

the new trustees do not take office until the 1st of January, then there is a two months' plus time frame that...

Ms. Wright: Well, trustees do take office December 1, so it would remain the same as that, but if they are going to go ahead with changes and move the election up, we have made a presentation also on that to that committee and we would be hoping that they would move up the date that the new board would take over.

Mr. Johnson: So, if the election occurred in the third week of October then you would suggest the 1st of November?

Ms. Wright: It would be very difficult to operate, especially if you were in a sanction mode, for boards of education, and in a "lame duck" period.

Mr. Johnson: If that Ministry, Municipal Affairs, or the government would not give consideration to moving the time of the office change over up, then the Ministry of Education would have more of a responsibility to become directly involved during that time frame; would they not?

Mr. McKenna: The role of the Ministry of Education, Mr. Chairman, with respect to the sanction is rather removed. I think the ERC was established by the government to perform the interjections as necessary in the process and I --

Mr. Johnson: I was suggesting that the Ministry should advise them to take more direct control of the situation, given that every three years we have that problem.

Mr. McKenna: Well, I think one of the reasons we have gone to a time line period, too, is that by the time we take a look at all parallel legislation - or potential legislation in the area - we would be one long time trying to make everything congruent. We still feel that that fixed time line - although it does not solve all the problems - does allow a sanction and does get people back in the schools, appropriately.

Mr. Johnson: The last question, Mr. Chairman. During that time frame of the strike, I think, it was October 17th, that I did call the Minister to give consideration to a review of this Bill and because my colleague, Bill Davis - the younger Bill Davis - we now have that review.

So, I hope that something positive can come out of it. I think some people have false expectations that there are going to be major changes. I do not think that is going to occur, but if we can do anything to better protect the rights of the students then it would be of some meaning.

I think that the boards and the teachers are adequately protected, but I do think we have to give consideration to speeding up the process so that the students do not pay the price of a prolonged strike.

Thank you, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Johnson.

Mr. McKenna, to help me out, at the beginning, I am not sure whether you answered Ms. Bryden's question with regard to any numbers of students that had quit after the strike or did not return to school?

Mr. McKenna: As best as we could determine, 93.

Mr. Chairman: 93. Mr. Davis?

Mr. Davis: Just to follow up to that. How many of your students transferred to other boards for their education during the nine weeks?

Mr. McKenna: Between 220 and 250.

Mr. Davis: How many came back?

Mr. McKenna: About 143.

Mr. Davis: So, 143 came back.

Mr. McKenna: Yes.

Mr. Davis: That leaves you roughly what? About a hundred still stayed there. Did those students then come back the following September or have they now moved off to another board for their education?

Mr. McKenna: No, we think that we have lost 12 or 13 of those 93 that ended up dropping out during the sanction period.

Mr. Davis: If I understood you correctly, during the strike only 93 students dropped out of school totally?

Mr. McKenna: As best as we could determine, yes.

Mr. Davis: Have you done any review to see what effect this year had? Have students drop out in a proportion that is different than norm?

Mr. McKenna: What we have asked each principal to do is maintain a very concise set of data with respect to failing rates in individual subjects at the end of each semester and during each semester on major tests. And at

this time we have not been able to pick up any anomalies.

Mr. Davis: Okay. I commend you for doing an internal review, by the way.

A quick question: When a strike is prolonged, do you feel that there should be an external review done by somebody, whether it is the ERC or somebody which just looks at the impact that the strike has had on the students, on the educational system, on the community, and on the teachers?

Ms. Wright: Well, our Board had requested through the OPSTA and the OSTC through the ERC to have a study done on the effects of our students. The University of Guelph undertook to do that study and they were going to do the study on the County of Wellington as well as the County of Grey. We thought we were going to be successful in having that study done and then all of a sudden the cost became horrendous and the University of Guelph wrote us a letter and said that they had decided not to do the study.

Mr. Davis: So, they would have had to support their own study, the University? Okay. When did your Board, or did your Board ever ask for a jeopardy hearing?

Mr. McKenna: I corresponded with the Minister's office and with ERC concerning jeopardy and within the last two weeks I became very pointed in that regard. The reply really is that the Director of Education has to establish grounds for jeopardy and then include that with a submission. I understood at that time, to the Minister of Education...

Mr. Davis: The Director has to determine jeopardy?

Mr. McKenna: I have to establish grounds for jeopardy and submit that to the office of the Minister of Education.

Mr. Davis: Not the ERC?

Mr. McKenna: I attempted to go through the ERC and get good advice from them that, indeed, it was my role to establish the conditions thereunto, first, and then follow either of the two channels.

Mr. Davis: Would I be correct in saying then that there is no definitive data to determine jeopardy that exists now?

Mr. McKenna: To the best of my knowledge, no.

Mr. Davis: Would I also be correct in assuming that when jeopardy was found in the Wellington County strike that

the rationale for that hearing of jeopardy, or finding of jeopardy, was the direct responsibility of the Director of Wellington?

Mr. McKenna: I think that you will have to ask that the Wellington County people that question.

Mr. Davis: Okay. Thank you. That is fair.

You mention the time frame. Let me ask you a question: Do you feel that the role of a fact finder, the way that it is set out now in negotiations, is a benefit to the negotiations?

Mr. McKenna: No.

Mr. Davis: No? Okay.

In the Matthews Report, John Crispo makes a suggestion - I would like your comment on it - that rather than having a fact finder through the process we should use mediation. And that the fact finder's role takes place when a strike is declared or just prior to a strike declared. The mediator is the process we use. How do you feel about that?

Mr. McKenna: I think if the intent is to toughen the fact finder's role then that recommendation does have some merit, from our perspective. The issue is: What is the fact finder's role and what, indeed, does that report really mean?

Mr. Davis: If I am not mistaken, and perhaps you could clarify it for me, it is my understanding that either party can now ask for a fact finder.

Mr. McKenna: That is correct.

Mr. Davis: Even if both parties ask for it, they do not have to abide by the fact finding --

Mr. McKenna: Correct.

Mr. Davis: In the time frame that he sets out, he suggests that the intent to negotiate be indicated in February - sometime in February - within 15 days after that notification. That what should happen is both parties present in written form the areas that are going to be negotiated and why they are going to be negotiated. And then, I believe he said 15 days after that either party could ask for mediation.

Do you think that that kind of process, where you tighten the time frame, would expedite negotiations and help them?

Mr. McKenna: It will perhaps expedite the negotiating but "help" may be another question. Our time frame that we suggested is much looser than that. And I guess the fundamental question is: What takes place at the negotiating table and for what purpose?

At the present time, teachers' federations use classroom teachers for negotiating. And it now becomes a question, if we use that type time line are we removing those people from the classroom for up to 15, or up to 30, or up to 60 days for an intensive process? I think that if we take a look at those two 15-day intervals, to suggest that those intervals happen on 15 days after class time is not fair particularly to the teachers. I do not think that that would help the negotiating process at all.

Mr. Davis: In your proposal, if I understood it correctly, at the end of the 31st of August then, from the 1st to the 30th there has to either be a lockout or a strike. If one does not occur then it is binding arbitration based on the fact finder's report.

Would I be correct in assuming that if the fact finder's report was beneficial to one party or the other, it would be advantageous for them to wait it out until the end of September the 30th and have the fact finder's report implemented?

Mr. McKenna: If, indeed, the job of the fact finder and his or her specific duties with the parties and the import of the fact finder's report are tough and far beyond that which they now appear to be, I am not sure whether it would be advantageous to either party to wait it out, so to speak. I think the fundamental problem, both in the original commission and in our current situation with fact finders, is that the role is very nebulous and the report itself is, from our perspective in Grey County, equally if not more so.

Mr. Davis: Just one last question, Mr. Chairman.

Could you comment for me on what were the relationships between teachers and students, teachers and staff, senior administration, teachers and trustees, teachers and the community during the strike and now.

Mr. McKenna: I will answer the first part and you can pick it up, okay?

Ms. Wright: Okay.

Mr. McKenna: I will give two or three sentences right at the beginning.

When the strike was called, the administration called in the five secondary school principals and indicated to them that they would not be required to make a decision during the sanction. Indeed, we were not going to force them to either be management or federation during the sanction period.

When met with the principals weekly for half a day and went over all their problems each of the nine weeks during the sanction; and that bought a tremendous amount of good will, both on the picket line and from the principals themselves, and really helped open the door later on.

Each of the superintendents visited his or her secondary school on a regular basis at least once a week to talk with the teachers on the picket line and to talk further with the principal and vice-principal of the school. It was more a case of showing the flag and indicating concern for all involved in the strike that I think has us in the good position we are in today.

There is more to that answer though, Mr. Chairman.

Ms. Wright: I would take it from a trustee's point of view politically that during the strike, the longer the duration of the strike the more problems we had internally with families. The rate of teenagers getting into trouble with the police and shoplifting on Main Street increased. The children did not attend school; their attendance was very poor because there was not anyone in school to instruct. And consequently, we had a lot of social problems at the time.

The children then started to turn on both teachers and trustees; parents and neighbours became very confused over the situation, and then eventually the local ministerial association stepped in. And so there came a time when it was to the advantage of the community that the strike had to indeed be settled.

Mr. Davis: What are the relationships like now?

Ms. Wright: Extremely good, but it is because we have worked very hard. We have had an ERC workshop. The teachers and the trustees have come together with a two-day workshop sponsored by the ERC, and we have gone a full year. We have had our wrap-up session with them and things are on a very positive -- now, they are not perfect, but they are --

Mr. Davis: What about the teachers' acceptance within the community now?

Ms. Wright: It is extremely good. And I would also like to add to that, that the first week that the students

were back in school there was very little, if any, conflict between teachers and students.

Mr. McKenna: We did put a tremendous amount of effort into public relations over the past year dating from the end of the sanction period, that both OSSTF and the trustees had high profiles.

Mr. Chairman: Thank you.

Mr. McKenna: Thank you, Mr. Chairman.

Mr. Chairman: Thank you.

Mr. Lupusella, very briefly?

Mr. Lupusella: Yes, very briefly.

I would like to make a short comment about the issue of the school year which was in jeopardy, affecting the students. I would like to assure you that the issue was raised in parliament by Mr. Johnson and Mr. Davis, and also by my colleague, Mr. Ferraro.

And actually the strike became a community issue affecting everybody in the community. I was just wondering, when the NDP raised the issue of the school year being jeopardized at the time of the strike, why they did not stand up in Parliament to raise the issue? And Mrs. Bryden is just raising the issue now. At any rate, I make this comment.

I would like to go back a little bit to Recommendation 20 of the Matthews Commission, which reads:

"The Commission recommends that province-wide bargaining by the teachers' federation or school boards not be allowed under an amended Bill 100."

And the question which I would like to raise before you is: If this particular clause was existing prior to the strike, do you think that the problem which the school board was faced with could have been prevented?

Mr. McKenna: Mr. Chairman, Grey County trustees, teachers and administrators do not favour province-wide bargaining. They did not before the strike; they did not during the sanction; and we do not after the strike.

There are local anomalies across the province that I think are best served by negotiating at the local level.

I should not be speaking for teachers. Excuse me.

Mr. Davis: That makes two --

Mr. Lupusella: Thank you, Mr. Chairman.

Mr. Chairman: Thank you very much. Any further questions from the Committee?

Ms. Wright, Mr. McKenna, we appreciate it very much for taking the time to coming here. You have been very helpful to us and we are happy and pleased with your frank discussion.

Thank you very much.

Mr. Chairman: Our next presentation is from the Ontario Association of Education Administrative Officials. Mr. Don Folliott, President; Bob Lee, Executive Committee; Bob Campbell, Executive Committee. Also we have Bill Forsyth, Director of Wellington County; John Boich, Executive Director of the O.A, but I cannot read the rest.

If you would like to identify yourselves, and welcome to the Committee. And whenever you are ready, please start.

Mr. Folliott: Thank you, Mr. Chairman. If I may, I will just introduce the members of our committee.

Immediately to my left is Bob Campbell, Area Superintendent, London Board. The far side member of the Committee, Bob Lee, Superintendent of Personnel, Peel County. Immediately to my right, member of the committee, Bill Forsyth, Director, Wellington County. Unfortunately, Joanne Stewart, who is from the Metro Separate, was not able to be with us today. And, of course, we have our Executive Director, who is sitting in the background there, John Boich.

Thank you, Mr. Chairman.

First of all, if I may, I would like to highlight the fact that we represent the supervisory officers of Ontario as education administrative officials. We work on a day-to-day basis between the two parties that, as you can appreciate, Bill 100 addresses our staff and our Board.

It is up to us on a daily basis to try to make things work because our one common goal - and the major area for which we stand as a professional association - is for the quality and the fair treatment for each and every one of the individuals that we are responsible for on your behalf, as the government, to educate, and that is our prime goal.

We recognize, by the way, the mechanism of Bill 100. We in Ontario have a tradition of collective bargaining and we recognize the right to strike. We also recognize that it

has happened since the introduction of Bill 100 and the fact that both the recommendations from the Matthews Commission and those formerly from the Ministry have stood at a standstill. We have had, since that period of time, and if I may use the word "games" being played, this is what happens when people know the rules very well and wish to use them in different ways.

There is time now for a honing of Bill 100. We have a number of critical issues and that is what we would like to address, Mr. Chairman, here and now. We realize that there is a lengthy document there, but there are critical issues that we would like to point out to you at this particular time and you may follow up with any questions that you wish.

I will ask our Chairman of the Committee, please, Bob Campbell, if he would address those critical issues to you now.

Mr. Chairman: For the Committee, it is Exhibit No. 0.002. Go ahead.

Mr. Campbell: Thank you, Mr. Chairman.

I think, Mr. Chairman, we will not take you through our brief except to highlight three or four major points in it. And then perhaps if there are some questions on some of the areas that we do not highlight here today, you may wish to address them at the end.

Let me say at the outset, Mr. Chairman, that we do not think there is major surgery required here, but a little bit of corrective surgery we think would make the process smoother.

The MacDonald Commission, one of its findings was that based on the research that that commission had done for it, that the outcome of bargaining was not inconsistent with the private sector. And so I think, in answer to the question "Does the process work?", the results of it do not appear to be exorbitant either way, but we do think there are some problems in the process and that is what we are going to comment on particularly.

Let me comment on, first of all, to say what we do not think we need. We do not need more study. The Matthews Commission has been referred to several times so far. I think the fact that you may not have hundreds of people coming here today is that there may be an attitude: Why come down here now? At the Matthews Commission, we came down before and nothing happened. Let me just comment briefly on that process.

The Ministry identified a number of problems as far back as 1979. That led to the Matthews Commission being

established. Most of those problems that the Ministry itself identified in 1979 were confirmed by Matthews. The Ministry itself identified a number of changes that they stated clearly in writing that they intended to introduce. None of the changes have been introduced. No recommendations of Matthews have been implemented. And quite frankly, most of the problems that were identified - the major problems in that report - are here today, some of them have been commented on in the previous submission.

Let me just highlight briefly what I think we are going to talk about. We are going to identify what, I think, we collectively have learned in Ontario in the last eleven and a half years.

In our brief, we identify four critical areas, one of which is the frame time. Quite frankly, collective bargaining in Ontario now is virtually a year-round process. It has a negative impact in many jurisdictions simply because of the time that it takes and the emphasis that it receives. And our first recommendation, and the first section of our report, deals with the issue of time frame.

The second thing I think we have learned over the last ten or twelve years is that there is a problem with respect to fact finding. Now, we do not believe the problem is fact finding per se. We believe that the problem is the timing and the place where fact finding is inserted into the process. The legislators, we assume, in 1975 felt that the public had a right to know what the facts were as identified by an outside neutral observer before the schools were closed. We subscribe to that.

However, I think it is fair to state that interest of the media in fact finding reports has diminished rather markedly after 1976. There is not a lot of interest out there generally speaking in fact finders' reports. There is usually a critical car accident or something that is more interesting on a day-to-day basis. So, in fact, we do not think the public has been informed particularly well through the present mechanisms.

The problem though is not that. The problem is where the fact finding occurs. We are identifying, Mr. Chairman, in our brief that fact finding, in our view, should occur after a strike vote has been taken; and it should be between that time and the commencement of a strike, not months earlier as now is the case.

Right now I think you could document - and ERC would probably support this assertion - both sides use fact finding as a bargaining chip - no question. You hope the fact finder's report will come down in your favour. One of the questions, I think, asked of the previous presenters related to that issue. There is no question that fact

finding is used now by the two parties, by both parties, as a bargaining tool.

We are suggesting that the primary reason for fact finding is still valid, but where it should occur is after a strike vote has been taken. The facts that are commented upon should be the relevant facts close to the time of the strike and, in fact, in many cases that is not the case.

A critical area that we have also identified has to do with strike termination. We appear to be better at getting ourselves into strikes than we are getting ourselves out of them. We have several recommendations, I think, you will find on page 8 and 9 of our brief.

The question of jeopardy was commented on earlier today. We think that is a very difficult situation to define. Very difficult; perhaps impossible. However, what is easier to identify is when an impasse has been reached. A clear impasse where perhaps the Education Relations Commission might deem that there is not much likelihood of saving this one, and perhaps that is the point at which the strike should occur. Some of the longer strikes we would suggest perhaps that could have been identified earlier in the process and some of the nine-week strikes might have been shortened.

I think it is fair to state, one thing we have learned in the education sector, Mr. Chairman, in the last eleven years, unlike some other sectors, in the education business we tend to think we have to really win and win everything.

Other strikes, once they start the bargaining, teams seem to work very diligently to shorten the length of the strike and get the issues resolved and get back to work. Some of the really long strikes in the educational sector would suggest that that is not always the case in our sector.

So, strike termination we see as a fairly critical issue and we have a couple of recommendations you will find in the brief there on page 8 and 9 with respect to that.

One of the suggestions that we do have relates to the equality of bargaining power. One of the things that we think that the boards should have the right to do, once the strike has been taken, is to ask for a supervised vote, only one; we do not think it should be abused. But we are looking for ways of eliminating a strike once it starts, shortening the length of time. And you will find that related to that third point.

Equality of bargaining power. We have a couple of suggestions there, as well, on page 11 in our brief. Quite frankly, we do not think that the theory of the legislation

has proven to be the fact. We do not think that there is an equality of bargaining power in that one of the parties now is only able to react and is not able to initiate any action. That is unlike collective bargaining legislation in a number of other sectors in this province. And a couple of specific recommendations: We are suggesting that boards should have the right to change the terms and conditions of employment at the same time the teachers have the right to strike.

I think the other point I will just finish on, Mr. Chairman, we are indicating over in our brief on page 17, one other option that we feel would help the bargaining process would be to allow some option in the nature of final offer selection.

The theory in 1975 was if you make the cost so horrendous that the stakes are so great to the parties, they will both bargain responsibly and then final offer selection will be good mechanism. We are trying to check in our research as to when it was last used and had some difficulty identifying the specific year.

It is fair to state that the way final offer selection now works nobody uses it. And our suggestion is that there be consideration - and this was, I think, one of the recommendations that was touched on in the Matthews Reports - on an item-by-item basis.

So, that in fact the final offer selector could choose the position of one of the parties on each item as opposed to only being able to choose the total package of either party. We think that would allow final offer selection to be used and, quite frankly, final offer selection will allow parties to save face.

One of the things right now that does not always happen, sometimes the two parties are not very good at letting the other side save face in a confrontation situation.

Just in conclusion, Mr. Chairman, we should comment on the recommendation of the MacDonald Commission. We totally disagree with the recommendations of the Commission with respect to the nature of bargaining. We do not wish to make any particular negative comments about a provincial commission, so we will just say we disagree with the recommendations.

We do not think that they are realistic; the reasons stated for them are in that report.

Last comment, Mr. Chairman. Bill 100 was never intended to eliminate, or expected to eliminate all the conflict in the bargaining sector in Ontario. And I think

that is one of the mistakes that a lot of us make; sometimes we assume that there will never be any conflict.

The other point that, I think, was identified in the Matthews Commission Report was that making strikes illegal does not prevent strikes. I think what we are suggesting in our report, Mr. Chairman, are ways of refining the process. And if you would sum up our recommendations, I think what they do, quite frankly, is put more pressure on both parties by shortening the time frame. It brings fact finding into a more realistic position and it allows some other options with respect to terminating long strikes. That, I think, is the critical problem: How do you terminate the long strike?

I would be happy to entertain any questions, Mr. Chairman.

Mr. Chairman: Are there any other comments from other members on the panel? No.

Good, we do have some questions. Mr. Johnson?

Mr. Johnson: Final offer selection, is that similar to the process they use in major league baseball?

Mr. Campbell: Yes, except that major league baseball has only one item, usually. We are suggesting that final offer selection be, unlike the present legislation which requires the selector to choose either the total position of the board, or the total position of the branch affiliate, we think that is in most cases unrealistic. The reason the parties are not using it is it does not work as it was originally intended.

Mr. Johnson: If there were ten items, there would be ten proposals from both parties and an arbitrator or the mediator, whatever, would take maybe one of each and down the list or...

Mr. Campbell: Item by item.

Mr. Johnson: Would then have to take all or --

Mr. Campbell: No.

Mr. Johnson: You feel that may be a realistic...

Mr. Campbell: If it means that final offer selection would be used and, as a result of using final offer selection we would avoid some unnecessary strikes, we think that that is good idea.

Mr. Johnson: Recommendation 6, page 9, an unresolvable impasse had been reached. Isn't one of the problems there to determine when that point has arrived?

Mr. Campbell: We are not suggesting, Mr. Chairman, in our submission that that is an easy task - it is not. We think it is an easier task than defining jeopardy in the strikes we have seen so far though.

Mr. Johnson: In my experience in Wellington County, where they were getting into their eighth, ninth, and tenth week and everybody I talked to was hoping to find a way to resolve it, teachers, board members, everybody, it was just extremely difficult to come down with some kind of assistance to reach that point.

Mr. Campbell: Sometimes irresolvable impasses result from personality conflicts between two chief negotiators.

Mr. Johnson: Yes.

Mr. Campbell: That can be identified, perhaps, earlier in a strike and have the strike shortened. We are not implying that that occurs in every case, but certainly that conflict between negotiators is a factor, and if an outside party comes in and says there is no hope of this being put together, let's shorten the strike up and get on with resolving it, perhaps at an earlier stage is best.

Mr. Johnson: Who will make this determination?

Mr. Campbell: We are suggesting that could be a function of the Education Relations Commission.

Mr. Johnson: I am not an expert on it, but I felt that that is where we were in Wellington County after the sixth, seventh week.

Mr. Campbell: Yes, there is always hope that tomorrow we will settle it. It is a difficult problem.

Mr. Johnson: Yes. Mr. Forsyth, you will be back on Friday afternoon?

Mr. Forsyth: Yes, I will.

Mr. Johnson: I will ask you some questions then.

Mr. Chairman: Mr. Lupusella?

Mr. Lupusella: Thank you, Mr. Chairman.

I have a question to anyone from the panel. I did not have an opportunity to read Bill 100; could you please tell me if there is any particular clause which has to do with students' rights on Bill 100?

Mr. Campbell: There is very little in there related to students' rights. Probably the most direct reference

would be the issue of jeopardy to students' education and that, I think, has been the most difficult thing to resolve in a strike situation.

Mr. Lupusella: As we are aware there is a principle, No. 7, of the United Nations Declaration of Rights of the Child, which has something to do in relation to education rights for students, which reads:

"The child is entitled to receive education which shall be free and compulsory at least in the elementary stages. And shall be given an education which will promote his general culture and enable him on the basis of equal opportunity to develop his abilities, his individual judgment and his sense of moral and social responsibility, and to become a useful member of society."

Now, do you not think that on Bill 100 we should have a clause to protect the rights of students to education? And how do you reconcile these rights with the right to strike?

Mr. Campbell: Well, Mr. Chairman, I think you have conflicting rights in our society in many areas and this is one of them. In our society there are certain basic rights to collective bargaining. And the question is: At what point are the rights of one group jeopardized at the expense of the rights of another group? And, I guess, that is why you have a Standing Committee reviewing it right now, Mr. Chairman.

We do not have a realistic answer to that. We will say that where the right to strike does not exist it has not prevented strikes in the educational sector. So, that I think should be a factor that your Committee should give some consideration to.

Certainly that was a major factor in the Matthews study. They fully realized that everywhere else where strikes had been banned had not eliminated strikes.

I think, frankly, no one, my recollection, Mr. Chairman, was that no one, trustees, teachers, or administrators, felt that compulsory arbitration was the better alternative for us in Ontario when the Matthews Commission reviewed it.

Again, there are conflicting rights and we do not have an answer for that one, Mr. Chairman.

Mr. Lupusella: Well, Mr. Chairman, if I may, the reason why I am raising this issue, is that it protects the right to strike for teachers; the students' education is at

risk and we are placing the students' education at risk. It is as simple as that. They are becoming the pawn for financial gains of one group that wants to have his rights or their rights protected. I am extremely concerned about that.

Now, do you have any disagreement if a clause which incorporates this principle that I have just read would be incorporated on Bill 100?

Mr. Campbell: Well, Mr. Chairman, I guess if the question is: Do we agree that the right to strike should be banned? No, we do not for the reasons that I have already states.

If we are talking about how do you protect it, I think the major changes we are suggesting in process are designed with that one point in mind. How do you not jeopardize the rights one of group - specifically teachers in this set situation - and still protect to the maximum degree possible the rights of students and their education?

And I think most of our fundamental changes, in the critical section of the report, the section we have labelled "critical" are attempting to address the problem.

Mr. Lupusella: Well, again, I did not go that far to the extreme that you have to ban the right to strike. The only thing which I am saying is, that if we incorporate the students' rights on Bill 100 as a condition to force the two groups to bargain in good faith because their school year is going to be in jeopardy, I think it is a good achievement.

Mr. Chairman: Was that a question or a statement, Mr. Lupusella?

Mr. Lupusella: It was a statement, Mr. Chairman.

Mr. Chairman: Thank you.

Ms. Bryden?

Ms. Bryden: Thank you, Mr. Chairman.

I certainly appreciate the Association of Education Administrative Officials bringing forward such a detailed brief and going over each of the recommendations of the Matthews Commission. As you and others have said, it has not been implemented in any great detail, so perhaps it is worth looking at by groups like yourself.

I would like to know how many school boards belong to your Association throughout the province?

Mr. Campbell: Virtually, our membership includes every board in the Province.

Ms. Bryden: In the last five years then you have presumably been involved in some way with whatever strikes have occurred?

Mr. Campbell: That is correct.

Ms. Bryden: Have any of you, yourselves, personally been connected with a board that had a strike?

Mr. Forsyth: Yes, I have.

Mr. Campbell: Mr. Forsyth is the Director of the Wellington Board --

Ms. Bryden: Yes.

Mr. Campbell: -- Mr. Lee is from Peel County.

Ms. Bryden: Those are two. So, presumably you are bringing very direct experience with the Act to us. Have you found, as the Grey County Board had found - I do not know whether you heard their brief before us - that the definition of "good faith bargaining" is somewhat unclear? They think it needs redefining.

Mr. Campbell: Well, I think we would respond without commenting on their specific position because we do not have a copy of their brief, sometimes people get more concerned about legislating good faith on the other party's part. If the rules of game are clear legislating and having external bodies rule on my intentions is not as significant as getting on with it and having a good set of rules that have some consequence.

We do not see that as the primary problem in Ontario bargaining today at all. We think the problems are, the ones that we have identified in the one section of the report, if there are some changes in process it will put more pressure on both parties. And pressure on both parties leads to better bargaining; pressure on neither party or an imbalance on one party or the other, does not lead to good bargaining.

I think in some of those situations good faith bargaining charges in our view have never let to harmonious relations, which is the fundamental raison d'etre for the Bill. We do not think that is primary problem. Most of the people we have been involved with have reasonably good faith on both sides. That is not the problem; there are some impediments to making that good faith work in the bargaining process. That is what we are saying.

Ms. Bryden: You want a shorter time frame. Could your representative from Peel refresh my memory as to how

long your strike was in Peel?

Mr. Lee: I guess it was 15 days.

Ms. Bryden: How long was the one in Wellington? I know it was long.

Mr. Forsyth: 51.

Ms. Bryden: 51 days. So, we have got the sort of two extremes there of a very long one and one that is not too disruptive, I suppose.

I do not know whether we will have an opportunity to hear further about the Wellington one. Is that correct, Mr. Chairman, that you are coming back? Perhaps we can then talk about its effect on the students.

How short would your time frame roughly be? We have had the process laid out by Grey County and they want to cut it off at September 30th after the process has gone through, from the day the teachers notify that they want a new contract.

Mr. Campbell: Well, I think there are a lot of different time frames you can come up with. We have one and there are some others that would probably work. I think the key in a time frame is putting pressure. We do not think that a date on which something magical is going to happen is going to necessarily lead to better bargaining.

I think what we are saying, it is an all-consuming process that starts -- There is joke right now that I heard the other day: Name two sports that both start around January 31st, nothing happens till April, nothing significant happens till after the the summer, and is usually resolved in October? Of course, the answer is baseball and Ontario Teacher Board bargaining.

And, I guess, the essence of what we are saying is, it starts and it no sooner ends then they give notice, you have not got the agreements printed and notice is given, and away we go again. We do not think that long process is a healthy environment for teachers and kids in a school system.

You cannot simply go about your job on a day-to-day basis with a 10- or 11-month process going on affecting your welfare all the time. We are suggesting that by not giving notice in January, which is essentially a joke, very little bargaining occurs until after the March break for a lot of good, valid reasons.

So, we are suggesting that by not having the starting point earlier you are compressing it. We think if you make some more checks and balances in the process, that the

process will take care of itself. Not changing the process fundamentally and simply imposing some magical end date will not give you better bargaining in Ontario, in our view.

Ms. Bryden: Well, I certainly appreciate your philosophical objective and that is to produce better bargaining that recognizes the rights of all the parties on as equal a basis as possible, and tries to improve the process. This is what I hope we will do through this Committee and through you help. Thank you.

Mr. Chairman: Thank you, Ms. Bryden.

Now you have a question from the one who is really responsible for us reviewing Bill 100. Bill Davis?

Mr. Davis: Thank you for your brief gentlemen. It is a very interesting brief. I have one or two very quick questions.

One of the recommendations of Matthews, 29 to be exact, was that the parties -- He is talking about final offer selection and he suggested that you should be able to combine the mediation and arbitration reports and select out of it those things which both parties believe are suitable and desirable in the circumstances. Would you have any problem with that process?

Mr. Forsyth: Mr. Chairman, I believe Mr. Campbell spoke to this earlier. It is in our brief as a suggestion of final offer selection.

Mr. Davis: In the Matthews report they talk about taking pieces out of what might have been the mediation discussions and the arbitration discussions, so you might get three or four areas out of here, and three or four out there, but it becomes a different process. Because final arbitration just leaves it one or the other, but you are saying item by item; right?

Mr. Forsyth: Yes.

Mr. Campbell: That specific recommendation is intended to expand the current option of final offer selection which is now limited to package A or package B. We are suggesting take the position of party A or party B on an item-by-item basis.

Mr. Davis: Okay. The supervised vote taken just prior to a strike; would such a step not undermine the role of the leaders in either group?

Mr. Campbell: That is the nature of bargaining. Any time you stand up in front of your membership, I guess, whether it is trustees or teachers, that is a risk. One of

the dilemmas we see right now, and Mr. Lee may want to comment on it, right now those votes that are taken, you know, they are pretty cheap votes.

What happens if your contract has expired and you vote to turn down the offer of the Board? Essentially nothing. What happens with the strike vote? Essentially nothing. In our view, having one of the parties - we are not talking here teacher or Board - what we are saying is good bargaining legislation gives a balance of power and a consistent rational process.

We are saying right now that aspect of it does not necessary give a balance of power. With one party able to act and the other party only able to react, is not equivalent in bargaining power. In our view that is a factor in the bargaining plan.

Mr. Davis: There has been a suggestion made several times by trustee organizations that, if there is no contract by August the 31st, there should be no school in September; how do you feel about that?

Mr. Campbell: How do you put that succinctly?

Mr. Davis: You try.

Mr. Campbell: It is impractical. It ignores the reality of schools and Ontario society, in our view.

Mr. Davis: So, you would not support that kind of notion?

Mr. Campbell: Not at all.

Mr. Lee: Mr. Davis, can I comment on that?

Mr. Davis: Yes.

Mr. Lee: Our whole presentation is designed to put pressure on the process and to make the parties get a settlement. If you automatically close the schools, it will be the government who will automatically close the schools, and the government will be blamed for it and it does not put pressure on the parties. It takes the responsible from getting that settlement, and living with settlement, away from parties and putting it on another party. And do not think it is practical, no.

Mr. Davis: Is there a difference between an elementary strike and a secondary strike?

Mr. Lee: The difference, of course, is the age of the children. We did not have kids dropping out or going to other systems, partly because our strike was not as long, of

course, and partly because we were not submitting marks to university. This kind of thing.

So, I do not think it is less detrimental, I am not saying that, but some of the conditions are a little different to what happens with --

Mr. Davis: Any different pressures placed on you or the Board because it is an elementary strike?

Mr. Lee: We felt that the first day of the elementary strike in Peel that we would just go nuts with parents saying, "What am I going to do with my small children?" That, in fact, did not happen. Parents had to accommodate and were able to accommodate.

Mr. Davis: In your recommendation on page 9, you talk about the lack of specificity in the definition of jeopardy, and it makes it difficult for the ERC to make that determination. The last delegation stated that it was the responsibility of the Director of Education to inform them that there indeed was jeopardy; is that correct?

Mr. Campbell: I think we should refer this to a resident expert on jeopardy.

Mr. Forsyth: In Wellington County, Mr. Chairman, there were, I think, two letters written in a general sense by the chairman of the Board in mid-strike period indicating some of the things that have been talked about here this afternoon in respect of the loss of time, naturally, and also the conditions, social conditions, in the community.

We did get finally a statement from the ERC specifying certain items that they thought we should comment on and we wrote a letter back commenting on those specific items.

Mr. Davis: But my question --

Mr. Forsyth: But I wrote it to the ERC.

Mr. Davis: I am trying to clarify. Is it the role of the ERC simply to agree with the Director of Education that there is a jeopardy finding in this respect? Or is it the ERC's responsibility to indicate there is jeopardy? Who makes the jeopardy finding?

Mr. Forsyth: Well, the ERC finally made the jeopardy finding in the Wellington County strike as far as I would understand it.

Mr. Davis: Based on you information?

Mr. Forsyth: Based on information that I presented to them, yes, that would be my understanding.

Mr. Davis: Then --

Mr. Forsyth: We had no communication back directly from ERC because not long after we made that particular submission we came to the final conclusion --

Mr. Davis: It was pretty close to 51 days, the Liberals could not stand the heat. The question I have is: you said you want some more specific outline or criteria; what kind of criteria would you, gentlemen, suggest is required?

Mr. Campbell: Well, one of the dilemmas you have in this one is that people started asking, "Well, the strike went 54 days, weren't the kids in jeopardy?" Well, yes, but not at 31. I think the great danger we see is all of a sudden you have got another trigger point and it is the day of jeopardy. If we define that jeopardy must automatically occur after so many hours are lost, pretty soon you are into a situation where the 21st day, and I think I heard a suggestion that a strike should only last a month.

I think parties when those kind of terms are clearly known are able to govern their bargaining behaviour, and I am talking about either the Board or the branch affiliate or both. It is like having the magical strike closure: you govern your behaviour differently. And I think jeopardy certainly has been talked about in terms of accessibility of students to university; marks being available; failure rates. There is a whole bunch of things that come out there.

The dilemma we have is, that you can say the failure rates did not go down or up this year, and we didn't lose more kids or we did. The reality is that there is a portion of the year missing and, after a certain point, there has to be something that has happened to the education of those kids. That is our concern.

Mr. Davis: Would this be a true statement, that a strike in a semestered school in the first half - that is the fall semester - is not as damaging to a student as a strike that occurs in the second half?

Mr. Campbell: Unless you are in your last semester before your diploma.

Mr. Davis: Yes.

Mr. Campbell: And a lot of kids are. I am not sure that you could make that statement. You could make that statement if the student was planning on taking -- with the exception of the students who plan to enter university the following year. You can always use the argument that if

they have enough credits they have a chance to make it up. That is not always true in semestered schools. There are a lot of courses offered that there is only one section in and in the smaller high schools, many of which are also semestered, there would not be the opportunity to pick up specific credits. So, I do not think we would agree completely that you can make that simple distinction.

Mr. Davis: Okay.

Mr. Campbell: For some students, yes; for other students, not necessarily.

Mr. Davis: So, I just want to clarify this again. The definition of jeopardy is the responsibility of the Director of Education who informs the ERC that he believes the students in his system are in jeopardy. Then the ERC either agrees or disagrees with that statement?

Mr. Forsyth: Mr. Chairman, that would be my understanding of it. The part about the Director of Education, I think he is the Chief Executive Officer of the Board of Education and probably is in the best position to formulate a letter to the ERC with respect to the conditions in his jurisdiction, depending on the strike.

My understanding was that from that basis the ERC made the decision that there was jeopardy in the Wellington County situation.

Mr. Davis: I see.

Mr. Forsyth: But I did not have direct communication that said that.

Mr. Davis: You indicated to me that there were two previous letters indicating that there was jeopardy which the ERC then said there was not jeopardy, so they disregarded the information?

Mr. Forsyth: It might be unfair to say they disregarded it, but we did not get a response immediately; when we did get a response then we had a more definitive statement in writing, which I had heard over a telephone earlier, but we finally got it in writing saying these are the areas we wish you to comment on.

Mr. Campbell: Mr. Chairman, one comment on the semestering. It is probably a fair statement that jeopardy for a lot of kids happens twice as fast in a semester program.

Mr. Forsyth: Yes.

Mr. Campbell: I think that is the one difference that

we have in 1987 from 1975 is the portion of our schools, secondary schools, that are on a semester program; and therefore, for certain kids, the longer the strike goes it has a double impact in terms of time lost from class. That is a fact. And it is compounded, of course: many jurisdictions have a mixture of semestered and non-semestered schools, so again, the effect varies from school to school for that reason.

Mr. Davis: Thank you

Mr. Chairman: Mr. Allen?

Mr. Allen: Thank you, Mr. Chairman.

I want to say, first of all, that I appreciate the detail of the brief and I look forward to going through it with some care at a point where I have a little bit more leisure than I have had between the moment I received it - a few moments ago; the present instant.

I appreciate very well that your concern is to rationalize the negotiation process rather than to fundamentally alter it or to follow the lead of my erstwhile colleague, Mr. Lupusella, who has abandoned all of the socialist principles and seems to feel that a fairly simplistic approach to this issue --

Mr. Chairman: Now, now.

Mr. Allen: -- would some how resolve the matter. And it is quite right that Bill 100 was never designed to remove conflict; conflict is built into the relationship to a certain degree and it is a healthy thing up to certain point. I think all of us would agree with that. So, I appreciate the approach in general that you are taking.

I wonder if you can provide me with a little further information. First of all, how many negotiations in fact take place in the course of a given year in Ontario between boards and teacher organizations?

Mr. Campbell: In most cases, unless there are multi-year agreements it would be the number of the board times two in the public boards and probably that in the separate boards, although, not necessarily.

Mr. Allen: So, we are talking probably somewhere in the order of a couple of hundred, two-hundred and forty, two-hundred and fifty negotiations?

Mr. Campbell: Yes, that would be a fair statement.

Mr. Allen: In how many circumstances do those negotiations lead to sanctions by one party or another?

Mr. Campbell: Very few --

Mr. Allen: Take the average or the last five years.

Mr. Campbell: Very few. And I think this is why at the outset, Mr. Chairman, I indicated we do not think a major transplant is required here, but there is some corrective surgery.

I think the statistics you would from the ERC would indicate all is well because statistically, you know, we are over 90 per cent, or whatever the figure is, and we would concede that point. Generally speaking it works well.

If you analyze the recommendations we are saying there are some situations that arise that truly jeopardize kids. And it is not how many were successful; it is how many were unsuccessful and long in terms of the sanction. It is in that context, Mr. Chairman, that our recommendations are made.

Generally speaking the Bill works well. You do not have major problems in good faith/bad faith bargaining charges, most of the things work well. It takes too long. And you think that in some jurisdictions that that is all that happens in the school system is collective bargaining between boards and branch affiliates. That we think is a negative aspect even if the results of it do not lead to a sanction.

Mr. Allen: Yes. So, that the percentage of sanctions is relatively small and if one then looked at the number of strikes or the numbers of sanctions that in fact lead to potential jeopardy, it would be even a smaller percentage still, I would suspect.

What efforts have been made by any parties to analyze real jeopardy; that is, by examining students in strike situations and to see what has happened to them in terms of the subsequent course of their studies?

Mr. Campbell: Mr. Chairman, we are not --

Mr. Allen: Have there been studies of that kind done?

Mr. Campbell: There has been at least one study where a group of students involved a strike were tracked as to their future results of university, but I think in terms of your general question, what has been done to analyze jeopardy, I am not aware of any significant study. Certainly, since most of the people involved in collective bargaining in school boards are members of ours, we are not aware of anything that has been done by the ERC outside the Commission itself.

Mr. Allen: What was the conclusion of the one study that was done tracking the students through into their access to university? And which strike was that?

Mr. Campbell: It was the Sudbury one and I think the effect was found to be minimum using the benchmarks in that study.

Mr. Allen: Yes. Of course, it is not the only benchmark and and it is not a very refined kind of criteria, but nonetheless it was a criteria. As I recall, I thought it was a more recent strike than the Sudbury one. In any case, the conclusion there seemed to be that there was not dramatic jeopardy.

Could you clarify a statement that you made which I am not sure whether I heard it right or whether you just stated it too casually. I am sure it is explained in your brief and I would not have to ask this question if I had read it.

You say that boards should have the right to change conditions of employment at the same time as teachers have the right to strike. I am not sure whether you are talking about something that should happen coincidentally or whether two conditions ought to prevail side by side, or exactly what it is you are meaning in some detail when you made that statement?

Mr. Campbell: Well, Mr. Chairman, that specific statement I did make it rather casually, but it referred to our point on page 11. Our tenth recommendation was simply that following recommendations of the Matthews Commission be implemented. And we go on to give some of the rationale following that, but not all of the rationale of the Matthews report.

There are four specific recommendations of the Matthews Commission, Matthews Recommendations 2, 3, 4 and 5 which address that equality of bargaining power. We are recommending that those recommendations be implemented and the specific one was No. 3 there, on page 11.

It boils down to the equivalence of bargaining power, Mr. Chairman. We think that is fundamental to good bargaining legislation that the parties have approximately equal bargaining power. We think while the intention was allottable in 1974 when the Bill was drafted, in fact, 11 or 12 years' experience indicates that it has not always worked out that way.

Mr. Allen: With regard to your note on final offer selection, it is an intriguing suggestion, but I wonder whether it would have the result that you wish; namely, that final offer selection would be used more frequently than it has been in the past. As I gather it was your wish that

that should be more frequently accessed as a way of avoiding the ultimate sanction.

Would it not be even less likely to be used under the terms that you describe, insofar as each package that is put together by either party tends, at least, to involve some tradeoff that one or the other is prepared to make and, therefore, there is a certain balance in the package. Whereas, your suggestion leaves it open to either the most expensive items being all put together in one package or the cheapest solution being put together in one package, and in that way appealing dramatically to one side and not at all to other, depending upon which choice was made?

Mr. Campbell: Mr. Chairman, we are not naively suggesting that that recommendation is going to solve all the problems. You cannot get it used less frequently than zero and that is what you have today. We are not aware of the final offer selection having been used since the Matthews Commission. We were not sure what year it last was done before the Commission report, but we are fairly sure it has not been used at all since.

Since that was one of the strike prevention mechanisms envisaged in the Bill when it was passed in '75 and that is not being used at all, that says to us there has got to be some reason why in Ontario teacher bargaining that option, that alternative to closing schools and jeopardizing and all the rest of that, there has got to be some reason why that is not being used. And the information we have from certainly our members who were working with both trustees and teachers, the effect of it...

Quite frankly, I do not think you could get selectors back more than once; you would run out of selectors the way it is now. You would either be a board selector or teacher selector, and your acceptance by the other side -- I think they say the life expectancy of a final offer selector is one visit. Nobody wants you back, you know, if the other side does not want you.

We are trying to be very analytic. We recognized it would not be used in many circumstances, the parties would want to shy away, personalities would shy away from it, but there may be one circumstance that a strike is prevented by having that option open to them. Right now the option is too much of a Russian roulette. I have got some good points, the other has got some good points; I cannot risk losing the whole bundle, so I am prepared to take the thing further down and not consider that as an option. And that, frankly, is what teachers and trustees are finding. They are not using the process. The risks are too great right now, I think, generally.

Mr. Allen: Thank you very much.

Mr. Chairman: Mr. Johnson, a quick question?

Mr. Johnson: Just back to the question asked, the previous Board, Grey, about municipal elections every three years. In 1985 we had two major strikes in Grey and Wellington; so far we have been fortunate in the last two years. 1988 is an election year. Should we not be preparing?

Mr. Campbell: Well, I think it is fair to state that the election of decision makers in the bargaining process sometimes creeps into the bargaining strategies. I guess, from your question, I am inferring that the closer move the election date to the tail-end of the bargaining process the greater risk there is of the two being intertwined. You are probably correct. I do not know that that would be a widespread occurrence?

Mr. Johnson: I think from the thrust of some of your recommendations, Recommendation 7 is very similar to Matthews' 26 which, the way I read it is the role of the ERC, Education Relations Commission, be strengthened; is that correct?

Mr. Campbell: Yes.

Mr. Johnson: Would it not make sense that in an election year when we have a council that is on the way out, school board, that I think in Wellington's case there is at least six or seven of the trustees that were not returning, and yet, they were the ones that had to make the decision that would be carried by the next board. That places a tremendous responsibility on that group without any consequences. And then the new board that comes in has to pick up what they have inherited.

My feeling is that if there is some way that in that third year, in the election year, if the ERC or someone could in some way assume some of that or in some way speed up the process, is that unrealistic?

Mr. Campbell: We did not study that at all, but I think what I hear you saying is: that it creates an uncertainty around the bargaining process and, in that sense, we would agree. If the trustee election creates an uncertainty in the bargaining process and therefore the process itself does not operate as efficiently and as effectively as it should, then you should look at that. We would agree with that statement. To what degree it is used by which party, I think you are making a point we would probably on balance agree with. It creates an uncertainty that in the other two years is not there.

Mr. Johnson: Maybe I am mistaken, but it seems to me that in both Grey and Wellington they did have this problem.

I am not being critical of the people involved, it is simply the process.

Mr. Campbell: Yes, it is a fact.

Mr. Johnson: I also feel that if a third, ERC, or someone would assume a little more responsibility in that type of scenario, it might be better for all concerned

Mr. Campbell: I think the pressures we are suggesting would be created by the changes we are recommending would help as well.

Mr. Johnson: Thank you, Mr. Chairman.

Mr. Chairman: Thank you very much, Mr. Johnson.

I would like to thank the Committee for coming forward and we really appreciate your brief and your frankness today. Thank you.

Mr. Folliott: Thank you, Mr. Chairman for having us here and I hope you notice, as we stated in the beginning, if we could hone the process to get the two parties in a shorter time frame together to get the job done, hopefully the winners will be the people that we are responsible to educate. Thank you.

Mr. Chairman: Thank you.

Our next presenters are from the Ontario Teachers' Federation, it is brief No. 6. We have Mr. Douglas McAndless, who is the President. We have John Faugeux, First Vice-President. Malcolm Buchanan, Second Vice-President. Mr. Guy Matte, past President of the O.T.F. We are going to be running out of chairs, but you can bring some ahead if you wish. We also have Margaret Wilson Secretary-Treasurer. And Dave Alysworth of the staff.

Are there any more people who want to come with you to the front?

Mr. McAndless: There will just be the three of us. I think we have introduced or have introduced most. Elaine Cline is First Vice-President of the Federation of Women Teachers' Associations in Ontario and David Kendall is First Vice-President of the Ontario Public School Teachers' Federation.

So, there are representative of all five affiliates, but I think rather than have the whole group here at the table we will try to operate this way. If there are specific questions that any one might have for representatives of any of the affiliates they can come to the table so they can make use of the microphone.

Mr. Chairman: Could you just introduce your panel?

Mr. McAndless: Yes. To my left is David Aylsworth; to my right is Margaret Wilson. And I am Doug McAndless, President.

Mr. Chairman: Are you going to read through your brief or --

Mr. McAndless: I am going to go through it. I am not going to read it in all the detail, but I would like to touch on the highlights. I would, first of all, Mr. Chairperson, like to thank you on behalf the Ontario Teachers' Federation for the opportunity to submit to the Committee on General Government its comments and recommendations concerning collective bargaining and the process that goes on between teachers and trustees.

At the very outset, I think that it must be made clear that the Federation wishes to emphasize that it believes the procedures adopted in Ontario 1975 under the School Boards and Teachers Collective Negotiations Act, Bill 100, to be fundamentally sound. The intent of the legislation, as described by an experienced practitioner of labour relations, was not to eliminate conflict, but to return to more harmonious and stable relationships and lessen confrontation by institutionalizing conflict and providing machinery for dispute resolution.

I guess our belief is that the process that Bill 100 has incorporated works; and it works basically very well.

Given the experience under the Act the Federation is of the opinion that major changes are both unnecessary and unwarranted at this time. However, in the context, this particular context, OTF has chosen to confine its comments and suggestions to a limited number of considerations; however, in so doing, it reserves the right to comment on any and all matters raised with regard to Bill 100 during the course of the hearings of the Committee on General Government.

Finally, the Federation suggests that proposals for change resulting from the work of the Committee on General Government should be subject to a comprehensive review process with opportunity for input from the parties prior to any introduction into the legislation.

One of our concerns is the time line. And the experience has indicated, and in listening to the last comment that there were only two sports, baseball and teacher school board negotiations, it was pointed out quietly at the back that opening day in baseball is a lot more fun too! It is protracted; the extended process is

drawn out, it is initiated in January of the year where the collective agreement is due to expire in August 31st. Many collective agreements expire before negotiations for a new agreement are concluded.

Fact finding without the consent of the both parties or the ERC declaration of impasse cannot take place prior to the expiration of an agreement. Fact finders are rarely appointed forthwith upon the expiry of an agreement. There is little pressure on the parties to bargain meaningfully until the collective agreement has expired and it is not unusual to have collective agreements unresolved fifteen months after the bargaining process was initiated.

In OTF in 1980 in the submission that we made to the Commission to review the collective negotiation process between teachers and school boards, we had three recommendation and they are found in the lower part of page 2. They were 12, 13 and 14. And that was that:

"Either party to an agreement may give written notice to the other party between January the 1st and March 31st in the year in which the agreement expires of its desire to negotiate."

So, we are providing a scope in there.

"The parties must commence negotiations within 15 days of giving notice."

So, there is a pressure, once you have given notice, to get something started.

"That a fact finder be appointed at the request of either party provided that at least 75 days have elapsed since the notice of a desire to negotiate was given."

So, again are attempting to pull together and this would be our first recommendation at the top of page 3.

The School Boards and Teachers Collective Negotiations Act be amended. And again, to provide notice at a later date for a desire to negotiate.

To require the appointment of a fact finder at the request of either party well before the expiry of the agreement.

And three, permit a branch affiliate to comply with all requirements of the Act and to be in a position to initiate a sanction should a new agreement not be concluded before the old one expires.

That is our recommendation at this point in time. It falls very similar to the one that we made back in 1980.

We have some concern in part B about additional provisions. Within the Labour Relations Act there are some provisions that are provided that we feel would in fact improve the process of negotiations and the results therefore.

In Section 45 of the Labour Relations Act it provides a mechanism for the expedited arbitration of rights grievances. In other words, it is a process to short circuit an otherwise rather lengthy grievance procedure and to refer a matter directly to an arbitrator.

We believe that in many instances, that if the School Boards and Teachers Collective Negotiations Act would permit this kind of expeditious resolution of grievances that are unlikely to be resolved without ultimately being referred to a third party, that the whole business of confrontation and conflict between the two parties might, in many instances, be reduced.

And secondly, subsection 44(9) of the Act, the Labour Relations Act, OTF believes that in the School Boards and Teachers Collective Negotiations Act that it should be amended to provide that an employee only may be disciplined or discharged for cause.

And that where an employee is discharged or disciplined for cause an arbitrator or arbitration board may substitute such penalty as seems just and reasonable in the circumstances.

Presently there is little opportunity for the arbitration board or the arbitrator to find a modifying position. And so again, we have our two recommendations on the top of page 4.

That the School Boards and Teachers Collective Negotiations Act be amended to provide:

One, that no employee may be discharged or disciplined except for just cause;

Two, that where an employee has been discharged or disciplined for cause an arbitrator or board of arbitration may substitute such other penalty as seems just and reasonable in the circumstances; and

Three, that each employee must be fairly represented.

And the third recommendation relates to this. That the School Boards and Teachers Collective Negotiations Act be amended so as to provide for the expedited arbitration of

rights and grievances.

Section C is very brief and it touches on a concern. I mentioned earlier in the brief the appointing of fact finders forthwith.

We found that the Education Relations Commission does not act forthwith. Frequently, the ERC is either unwilling or we believe more likely unable to comply with this requirement. OTF considers it vitally important that the Education Relations Commission be provided with sufficient resources to discharge its responsibilities under the Act in a timely manner.

They cannot do that currently because of some rather limiting conditions that have been imposed on them, both financial and personnel-wise. So, that is our fourth recommendation.

On the right to strike. I am not going to read the whole section, but this is, of course, one of the very essence of the Bill 100 and the whole process of School Boards and Teachers Collective Negotiations Act.

On page 5, and I am going to quote from the submission that we made at another time:

"It is imperative that all terms and conditions of employment put forward by either party continue to be the subject matter of negotiations. Any attempt to restrict the scope of negotiations would increase frustration and create legal problems. The restrictions in the scope of negotiations imposed by the Crown Employees Collective Negotiations Act, for example, have served to exacerbate rather than clarify the negotiations process.

"Realizing that collective bargaining is essentially an adversary process, the designers of The School Boards and Teachers Collective Negotiations Act made a decision attempt to channel the conflict inherent in the process rather than to dam it. They did so with the knowledge that if conflict were routed through designated channels, monitoring and public protection as well as dispute resolution mechanisms could be built into the process. They also realized that attempting to dam the conflict amounts to ignoring its reality. When the conflict spills over, as it must, it runs unchecked and unimpeded outside designated channels and sometimes even outside the law. The ultimate right of the individual

teacher through his/her branch affiliate to refuse to work without quitting his or her employment is fundamental to the free collective bargaining and to the design of the Act. That right could not be withdrawn without compromising the Act.

Mr. Chairperson, I would point out there was some question earlier about the ratio or the number of strikes. We have done some researches into this and you will see in Appendix II the data, but 97.7 per cent of the collective agreements are arrived at with no sanction.

The question has been asked regarding this in comparison to other labour disputes, and I would suggest that the information we have been able to gather from the Labour Relations Board and so on, that negotiations under the Labour Relations Act probably is about 40 per cent less effective. And so I do not think the Bill is seriously flawed.

Again, the question comes up: In the length of the strike, in the event of a strike or lockout, the welfare of society, and particularly, that of the students affected by the strike. We believe that Subsection 60(1)(h) of the Act is under this Section, that the Education Relations Commission is required to advise the Government when the continuation of a strike or lockout places in jeopardy the successful completion of courses of study. In the past ten years the ERC has only been required to make this determination on three occasions.

I believe that we in OTF would question, to some extent, the opinion heard a little earlier this afternoon that the Director of Education is the only person who might be able to make that decision. We are not totally convinced that he may be sitting in an absolutely unbiased and non-pressured politically, position.

We make some recommendations in regard to this and they are found on page 6 in the middle. The Ministry of Education subsequent to a strike or lockout adjust transfers to the school board, because as you heard earlier we need pressure on both sides. And I can assure you, that from the teachers' point of view there is pressure, economic pressure, financial pressure, questions whether you will be able to make the mortgage payment or not come up, put groceries on the table and so on. There are those very real financial questions.

On the part of the school board there have been occasions when the school board has sat back and really financially come out of a strike economically better off than they went into it.

And so on page 6, Recommendation 5.

That subsequent to a strike or lock-out adjust transfers to the school board:

One, to recoup the government portion of savings and recognized extraordinary expenditures;

Two, to recoup 1/200th of the total annual grants for Special Education and the Trainable Retarded for each day of strike or lockout; and

Three, to recover 1/200th of the weighted level of recognized ordinary expenditures per pupil for each day of strike or lockout.

We believe that this will then make school boards and the taxpayers a more equal partner in a sanction situation. Both will suffer some financial hardship.

Section E deals with principals and vice-principals. Section 65(2) of the School Boards and Teachers Collective Negotiations Act, which requires that in the event of a strike or lockout principals and vice-principals remain on duty, we believe, is unnecessarily divisive. It undermines the collegial atmosphere necessary to the school's effective functioning and compromises the rights of the principals and vice-principals to full participation in the collective bargaining process.

Schools cannot be operated effectively by principals and vice-principals alone. To attempt to do so with volunteers or teachers from outside of the bargaining unit is not only unproductive, but quite possibly unsafe as well.

Principals and vice-principals should be granted the right to strike and the right to be uniformly affected by a lockout.

Should the event of a strike or a sanction take place, we recognize that the principal and vice-principal have certain responsibilities. Obviously, they are going to be required to notify the parents that on a given date the schools will be closed because of a strike or lockout. They have a responsibility to ensure that the building has been properly locked and secured. They have a responsibility to try and make sure that the parents do not send their children to the school where there will be a lack of supervision to protect them. Those are the responsibilities the principals and vice-principals have; they should not be attempting alone or with the aid of volunteers to run a school program.

And on the top of page 7: That the School Boards and Teachers Collective Negotiations Act be amended to extend to principals and vice-principals the right to strike and to

provide that they look out aptly, uniformly to all members of the branch affiliate, including principals and vice-principals.

And finally, representation. School boards have traditionally have been very reluctant to recognize teachers other than the regular day school teachers in the bargaining under Bill 100. However, recent Divisional Court rulings in Humewood case and the case involving the adult day school teachers in Ottawa, would suggest that besides regular day school teachers, there are other teachers who have rights as well.

And OTF believes the time appropriate to extend to all teachers of programs supported by grants from the Ministry of Education the rights to have their conditions of employment determined under Bill 100. And therefore we have Recommendation number 7.

Mr. Chairperson, you will find in Appendix 1 a summary of the seven recommendations. Appendix 2, the experience with Act and some further data. And I would prepare to answer any questions or find someone in the group that can.

Mr. Chairman: Thank you very much.

We do not have a question as of yet, but is there any other member of the panel that wants to give their point of view? No.

Mr. Jack Johnson?

Mr. Johnson: I think everyone is agreeable to the one thrust of our hearings, is that the Bargaining Act is protracted.

Mr. McAndless: Yes.

Mr. Johnson: I personally feel that Bill 100 is not seriously flawed and I feel that we can work within the framework of what we have and strengthen it.

One serious concern I have is for the students and the young people that are being affected by strikes. Now, you have mentioned impact on the teachers, and I well know that as I have many friends that are teachers. I also know of the impact on the taxpayers, that are paying for something that is not happening. I have a great deal of concern that sometimes we overlook the young people.

In your presentation, in what area do you refer to the students?

Mr. McAndless: Well, that is touched on in the area where it would be Subsection 61(h) of Act. It is under this

particular aspect that the Education Relations Commission is required to advise the Government that a continuation of a strike or lockout would, in fact, place in jeopardy the successful completion of courses of study.

So, we believe that the Act itself does have that particular concern covered at the present time. I also know from experience that when the sanction is finished the teachers go back and they work extremely hard with the students to make sure that the work is caught up and that every effort is made to ensure that the students are not going to lose significant parts of the program that are covered.

But we believe that the Act already has built in a provision to look after jeopardy in those particular cases

Mr. Johnson: Well, I agree and disagree. I certainly know that the teachers in Wellington have done everything in their power to try to overcome the difficulties that did come about from the strike and I give them full credit for it. But I do feel that, regardless of the best intentions, 11 weeks is too long for any strike; it has to jeopardize some children, if not all. And that there has got to be a better method than going 51 days for a strike.

Mr. McAndless: Well, I think that the other aspect that we have suggested here is that there seems to be a little bit of lack of financial pressure, at least on the school board. There may be political pressure on the trustees, but the fact that the taxpayers' money which is being spent, as you referred to, for a service which is not being provided, is sitting there as a benefit that the school board has, presumably they will return that to the taxpayers in a lower tax base or lower tax rate the subsequent year.

We feel that this is, in fact, not the best way to work. That, in fact, if the school board recognized that they were going to lose financially for every day of the strike, that it would tend to move them more quickly to the bargaining table to seriously sit down and find a resolution.

Mr. Johnson: Well, I think that you will find that in any strike that the board is subject to just as much pressure as the teachers. It is a nasty situation and we are all concerned.

In Recommendation 42 of the Matthews Commission, it is similar to one of your recommendations. They suggest that ERC be given more dollars to pay for fact finders, arbitrators, for final offer selectors at levels which will ensure the selection and retention of qualified individuals. And that more training be provided to these people.

Do you think that strengthening the ERC would help to shorten the strike?

Mr. McAndless: I think there are two things in that regard. I think that the ERC at the present time does not have the resources, both financial and physical resources, to be able to provide fact finders expeditiously. That they can get in and do their job. There is no question, it is our belief that some of the fact finders are very effective and some of the mediators are very effective; others are not as effective. And maybe some training, some development of the skills, but I think you have to have, first of all, salary that is going to attract the kind of people who have naturally the skills and talents to do that.

I believe the other recommendation, in changing the time line, providing a degree of flexibility and tightening up the time line as we have in the recommendations on page, 4 in Recommendation No. 2, would tend to cause the time line to be somewhat different from board to board.

And therefore, all of a sudden on the first day of September you would not necessarily have to have all of the fact finders to be put in place, that some of them could have been put in place earlier in the year. If one party felt it was necessary and they had then able to get the processes begun earlier, that fact finder could have maybe done their work or the mediator could have done their work and would be free later on to work with another. So, we believe that that would be an advantageous aspect.

Mr. Johnson: Well, I certainly support the concept that anything we can do to shorten the time frame would be beneficial. I also feel that from what I am hearing today we should be giving more resources to the Education Relations Commission and maybe some more power as well.

Mr. McAndless: David, did you wish to answer?

Mr. Aylsworth: Just to say that I think the ERC has sufficient power under the Act; it is a question of whether or not they are exercising or able to exercise their mandate at an appropriate time.

Mr. Johnson: What do you mean when you say "they"?

Mr. Aylsworth: I think there is some evidence that they do not have sufficient financial resources to hire enough fact finders to put them in the field in the outstanding agreements, as of September 1st. And you can deal with that in two different ways.

One, you can provide them with enough money to hire appropriate people to fulfil the functions under the Act;

and, secondly, you can alter the time line so that those calls on those resources come at various times throughout the year, by permitting branch affiliates and local boards to accelerate the process in some instances to allow it to go to a point where the contract expires.

But there are two ways of addressing the issue without giving the ERC additional authority under the Act. If they exercise, we believe that they have sufficient authority under the Act to fulfil their role adequately and that they do not need additional responsibilities.

Mr. Johnson: But they do need more resources?

Mr. Alysworth: They do need more resources.

Mr. Johnson: Thank you.

Mr. Chairman: Ms. Bryden?

Ms. Bryden: Thank you, Mr. Chairman.

I would certainly congratulate the Ontario Teachers' Federation for bringing a very comprehensive brief to us and bringing the views of all their affiliates, because I think they are greatly affected by this legislation and I am rather pleased that they basically think the process works. and that major changes are not necessary, but whatever suggestions they do have for changes I think we should look at very carefully.

I do like your suggestion also that whatever legislation comes down, there should be an opportunity for input from all the people who have appeared before us, again, to comment on those proposals.

I have two or three questions. One is, when you look at the right to strike, you also quote the Matthews Commission Report on the reasons why compulsory arbitration is not an adequate substitute. I presume, because you quoted, you very strongly endorse their conclusions on that subject that compulsory arbitration is not a substitute for collective bargaining under the Act.

Mr. McAndless: No, we do not feel that that resolves the basic conflict that was there. An imposed settlement is usually not a satisfactory settlement.

Ms. Bryden: But you do, of course, consider the use of arbitrators for short circuit settling of certain items?

Mr. McAndless: Yes, we touched on that earlier. This was in the grievance process that usually arrives out of the collective bargaining contract.

And what happens there, very often the grievance process can be very, very lengthy. And in the Labour Relations Act it is recognized that this lengthy process can often build up antagonisms, hard feelings, just having the process go through.

So, it is our belief that if, in many cases where it appears that it is going to have to go to a third-party resolution anyhow, that, in fact, the process could be short circuited and eliminate the length of time, the protracted length of time, it is drawn out.

Ms. Bryden: Yes.

Mr. McAndless: David?

Mr. Aylsworth: First of all, we would draw a fundamental distinction between voluntary arbitration and compulsory arbitration. We have not quoted the Matthews Commission work at length, but we have provided to your clerk copies of the OTF's submission to Matthews in 1980. And one of the chapters in that submission was devoted to the right to strike and the business of, or the potential of, compulsory arbitration. So I recommend that to you.

Ms. Bryden: With regard to voluntary arbitration, I am not completely familiar as to how the arbitrators are chosen. Is there a roster drawn up, let's say, for the chairperson? Each party, of course, chooses their own person as well; is that not the case?

Mr. Aylsworth: There is a mechanism within the Act.

Ms. Bryden: Yes. The list of recommended arbitrators to chair the group, is there input from the different parties in drawing up that roster of arbitrators?

Mr. Aylsworth: Informally, yes.

Ms. Bryden: Informally.

Mr. McAndless: I think one of the major concerns that we have - we go back, again, to the resources - and that is that the ERC does not have an extensive budget to pay salaries that would attract the type of person who, in many instances, the kind of salary that they would demand or can demand, to be the kind of arbitrators and mediators and so on, that we would like to have. Many of them simply cannot afford to do it from their private practice or business, law firm, whatever.

Ms. Bryden: Are there sufficient arbitrators on the list so that you can get one fairly quickly or are there long waits to find an arbitrator who is available?

Mr. Aylworth: Arbitrators under the process are not a major problem. Some of the other functions under the Act there are significant problems because they require people in numbers, in such numbers that it makes it very difficult to comply with the requirements of the Act - specifically fact finders.

Mr. McAndless: And mediators.

Mr. Aylworth: And mediators.

Mr. McAndless: Good mediators are hard to find.

Ms. Bryden: Are you consulting informally about the drawing up of rosters of mediators and of fact finders that could be called on, or is that internal...

Mr. McAndless: Margaret?

Ms. Wilson: We get asked from time to time if we have any ideas for people who would be interested in training, but the blunt fact is that the ERC has difficulty paying the going rate. And so you can make up your lists, but if people can earn more in private practice than they can in working for a government agency, they will stay in private practice. And part of the shortage is related to the lack of resources and the rate that is offered. And I actually know some first-rate people who did initially work for the ERC as mediators and arbitrators who do not any longer because they too have mortgages.

Ms. Bryden: So, that that is really one of your key recommendations, that there be adequate resources provided to the ERC to provide adequate fact finders and other people involved in the process.

Just one other question. At what stage do you think the fact finder should come in, before bargaining starts or when it has been stalemated? At the moment it comes in before as I understand it.

Mr. McAndless: Well, I think in our recommendation, again, where is it, on page two, I believe. Our first recommendation that the appointment of a fact finder at the request of either party well before the expiry of the agreement; in other words, very obviously the negotiation process for the new contract will have commenced. But we believe that either side, one side or the other, should be able to request a fact finder, not necessarily a mutual, not both parties because quite often the other party is quite to not carry on. But we believe that that could expedite.

Ms. Bryden: One of the previous groups appearing before us thought that the fact finder's report became part of the bargaining and part of the proposals from each side,

and they were both hoping for a favourable report before they actually got into the knitty-gritty of the bargaining. So they thought that it should be at a somewhat later stage.

That has not been your experience particularly, that it would be desirable to have it later?

Mr. McAndless: Well, quite often it is delayed now, in fact, both parties will ask for a fact finder; there are no fact finders available; it may be weeks before a fact finder is appointed. In that interval, of course, there is nothing transpiring. No negotiations take place. The fact finder comes in, that takes some period of time. The fact finder goes away to write the report, that takes more time.

What we are saying in our Recommendation No. 1 is, that in trying to shorten that length of time that by allowing the fact finder to be called in by one party or the other, and to be called in prior to the expiration of the current collective agreement; that you can move it up if one party feels it is going to be useful to do that, and thus reduce the fact that on the 1st of September there are probably 140 fact finders somewhere across the province who really should be appointed. Now, they never do that; they wait until the parties request them. But, in fact, the process that is currently in place tends to demand a lot of fact finders at the same time causing great delays and a fact finder much earlier might have gotten the process going and have a solution to it. Margaret?

Ms. Wilson: If you leave it later in the process it is not a fact finder you need, it is a mediator.

Mr. Aylsworth: Yes.

Ms. Wilson: The parties will have already proved that they have not managed to find common ground. A fact finder is not a mediator; he is neutral who comes in, observes the two parties, and puts two sets of facts down and comments on them. His function is not really to bash their heads together to bring them together. So, if you leave that process any later than it is now left, it is almost non-functional.

Ms. Bryden: Okay. Thank you very much.

Mr. Chairman: Mr. Davis?

Mr. Davis: Thank you for the brief and the areas you have covered.

Let us pick up on the fact finder because you are well aware that the present situation when a fact finder is used, that depending on the fact finder's report, if it is

beneficial to one party as opposed to other, one party will say let's have it and the other party will not. So, fact finding can both have a positive effect and a negative effect.

If we bring it in earlier at the discretion of any party, be it a board or be it a federation, and a fact finder comes down in favour of one party or the other, it could become a guestimate to the negotiations by saying, "Well, let's wait it out." What about John Crispo's suggestion that in the Matthews Report, he has a dissenting report in which he says that a more appropriate mechanism would be to bring a mediator in at an earlier stage and leave the fact finder until just before the strike. What do you think about that? It serves the same purpose, I understand.

Mr. McAndless: I am not sure that it does.

On page 2 we have an 'if' clause in there. "If fact finding is to be retained" and I think that that is a significant phrase. I am convinced that fact finding should be fairly early in the process - if it is fact finding. If it is going to be mediation, then it can come later in the piece. But if you are going to have fact finding, I believe fact finding should be fairly early in the piece, get the facts on the table and people know where they are going from.

As you say, there tends to be on occasion that if one group or another is convinced that their position is very justifiable and that the fact finder is going to come down on their side, there is a tendency sometimes to delay until the fact finder is appointed. I do not think appointing him later on and putting a mediator in before is going to resolve that particular predicament. All I think it is going to do is make it worse.

Mr. Davis: If the fact finder is retained, would you suggest that maybe the fact finder should be removed from the collective process?

Mr. McAndless: I think that there are occasions where the fact finder has been helpful to the process. I think that there are some occasions. I think that the current process with the fact finder not being able to be appointed unless both parties agree and not being appointed very often until the current contract has expired. Very often the fact finder is appointed in October, November, then, again, you have allowed the process to go on too long.

Mr. Davis: The appointment of the fact finder now, both parties have to agree with it; they do not have to agree to the resolution that comes down though, do they? Just because you agree there is no commitment that you have

to agree to the fact finder's report?

Mr. McAndless: Oh, no.

Ms. Wilson: No.

Mr. Davis: No.

Mr. McAndless: Nobody has to agree to the fact finder's report.

Mr. Davis: Let me ask you some other questions. You mentioned on page, I guess it is page 5, when you start to move into the penalties against the boards. When you talk about "to adjust the transfers", what does that mean in dollars? I need your help, I am not that familiar with it.

Mr. McAndless: Okay. I am going to turn to David. I think I know what it means, but David is the one who crunches numbers around our office and deals with the rent regs on almost a daily basis.

Mr. Aylsworth: The first two recommendations are, the first two parts of Recommendation 5 are, in effect, a continuation of what is in existence now; that is, the provincial government recovers their portion of the savings that fall out of the board budget because of a strike or lockout.

The change is in the third one. What it says is that it recommends that the provincial government recover not only their contribution in terms of transfers to school boards, but also the contribution of the taxpayer up to the level of the recognized ordinary expenditure.

The effect of that is to charge back against the taxpayer the cost of educating those students up to the equalized portion of the cost, whether those students are in school or not. The point being twofold: the first one is that local ratepayers, including the parents, are not disinterested third parties to a strike but, in fact, the arm's-length employer of the teacher.

Secondly, that they should not benefit in the long run from a strike by being given a tax holiday down the way. The intent being that if the ratepayer suffers an appropriate loss of revenue too, then the pressure will be greater on the parties to resolve the issue at an earlier date.

The point is now that those ratepayers without children in school suffer no loss and, in fact, they get a money back guarantee on the portion of the property taxes that go to education for the period of the strike or lockout.

Mr. Davis: Would that money then go to the Ministry of Education?

Mr. Aylsworth: Presumably.

Mr. Davis: And they can do what they want with it?

Mr. Aylsworth: They can do what they want with it.

Mr. McAndless: From the ERC.

Mr. Davis: Presently - just clarifying - presently the government now recoups, if a strike is on, its proportion?

Mr. Aylsworth: It's a portion of the savings, which means whatever. If they are spending, board acts thirty cents on the dollar then they will take back thirty cents on the dollar. If they are funding ten cents on the dollar they will take back that. So it depends on the rate of grant and the form of the transfers to the local school board. But they simply take back their portion of the actual savings.

This proposal is to have them also recover a portion of the money that would have been spent on the children's education had there been there and it is proposed in a way that the burden would be equalized across the province; that is, it would extract a larger dollar effect in an assessment-rich board than it would in a assessment-poor board, and the effect would be equalized on the ratepayer right across the province, regardless of the board.

Mr. Davis: You said on page 5 that, "consideration should be given to measures designed to induce the parties to bargain meaningfully" and one of them is the one you indicated; are there other ones?

Mr. McAndless: Well, I think that the first resolution that came in, the first recommendation - shortening up the time line - I think is one that is going to facilitate. Providing greater resources to the ERC so that in fact they can forthwith provide fact finders, mediators, this type of aspect. I think even the recommendation regarding the grievance arbitration aspect will tend to reduce the kinds of frictions that build up sometimes over a period of time that create animosities between a school board and their employees that result in sanctions.

So, I think that a number of the recommendations that we have put forward would be designed to ultimately reduce the length of time of the negotiations.

Mr. Davis: Some people are suggesting that if there is no agreement by August the 31st, the teachers should not go to the classroom in September. How do you react to that?

Mr. McAndless: Well, I heard the reaction before and mine is much the same. I do not think that is going to resolve anything, in fact, I think that it is going to reduce the pressure on both sides. This is a government piece of legislation that has shut the schools down before they have even got started and that it probably will have more of a negative effect than a positive effect.

Mr. Aylsworth: One of the recommendations would allow a branch affiliate to accelerate the processes under the Act to put themselves voluntarily in that position. But to require it, as a point of law, would create an unmanageable burden. We would have an eleventh hour in every set of school board negotiations across the province and it would be the same eleventh hour, and we would not have the flexibility as occurs under, say, the Labour Relations Act where contracts became due throughout the year as opposed to a specific date. It would just create an unmanageable kind of situation if you were to do that.

Mr. Davis: In the presentation just before you by the Organization EAO, they suggested the final offer process item-by-item. I just want your feeling on that.

Mr. McAndless: I would suggest that from the teachers' point of view the final offer selection process is not working because from a labour point of view it is the last crumbs that are being offered anyhow, and you have got everything to lose and nothing to gain. And I do not think their recommendation is going to all of a sudden make that particular proposal any more attractive to the workers.

Mr. Davis: My colleague raised the issue about the jeopardy of students. You indicate that they are protected under subsection 60(1)(h) of the Act:

"Is required to advise the government when the continuation of a strike or lock-out will place in jeopardy the successful completion of courses of study."

How do you, as a teacher, what kind of criteria would you suggest that a board or director - and I understand that you do not think that the director should make that decision totally by themselves through the ERC - what criteria should they be looking at to make that determination?

Mr. McAndless: Well, there are a number of criteria. I think on this one Margaret Wilson was on the OSSTF Executive at the time of the Sudbury strike, which was a

long one, and I know there were discussions at that point in time. Maybe Margaret would like to make a comment or may call upon Malcolm to?

Mr. Davis: I would just like to hear because you have got semestered schools now as well, and I am just wondering if there was some criteria that is rational, reasonable to look at?

Ms. Wilson: I wrote the teacher position at the end of the Metro strike on the jeopardy hearing, and it was not an easy thing to do. My Director of Education, the Director for the Toronto Board, held the Board's side and we sat and looked at each other said the same things. Well, you are dammed if you do and you are dammed if you don't in that situation.

In the case of Metro it was a long strike, but we could not deny that students had lost a significant part of their school year. We could assume that for students in grade nine, ten, perhaps part of grade eleven, it would be easier than for more senior students to gradually shift courses of study around so that there would be some coherence to their program by the time they graduated. And for the senior students, we proposed to pair the programs and provide additional structured homework and assistance, but we had to recognize that the programs had unquestionably been affected.

Now, there was a research study done that followed the students into university at the end of the Metro strike. The bulk of the students were tracked and by the end of the first year in university most of the students had recovered and, in fact, passed; I believe only one failed. And in that particular case his rather cynical parents said that they did not think it was the strike.

And in Sudbury, the Minister of the day brought the proposal to OSSTF that we look at the possibility of make-up time. The proposal was never fleshed out in the sense of identifying who, other than senior students, would need it. The proposal was fleshed out to such a degree though that the teachers would be paid time-and-a-half for the make-up time, and the make-up time would operate in the evenings and into July.

With some trepidation the Executive in the Sudbury takeover team recommended it to the teachers who voted on that as a separate item. And I think partly because of the emotionally consequences at the end of the strike the teachers, in fact, rejected the idea and it went no further. That was one that was introduced Dr. Stephenson. As far as I know it has not been discussed in any other affiliate of OTF and I should emphasis that. Malcolm was one of the people locked up with me at the Mowatt Block at the end of

the Sudbury strike, so he might want to say something.

Mr. Davis: Go ahead, Mr. Buchanan.

Mr. Buchanan: Thank you. Just to remind the Committee too that there has only been three such occasions when there has been jeopardy declared, and out all of the collective agreements since Bill 100 has been in operation, I think you must keep that in mind. That is a very, very small number: three times jeopardy has been discussed and declared.

Just back on that, I think one of the concerns that we have is that it is like a star chamber type of situation, because there is no hearings, there is no input - it just occurs. And that to us is a worrisome factor about it; is like a star chamber, if I can make that point clearly and strongly.

Regarding the Sudbury situation, and to reiterate this is not a OTF position, being party to the tail-end of the Sudbury troubles a number of years ago, it was amazing to find out from our colleagues who were on strike for 56 days, that they would not be prepared to work for the additional monies to make up the time for a credit; a credit, of course, is a 110 hours and time is of the essence. They decided on a professional basis that they would make up the time themselves at their expense by working an additional half hour each day with those students.

So, this is an area that I know that OSSTF is interested in. And just to reiterate what Margaret was saying, it is maybe something that could be explored some time in future but, if it is, OTF would naturally want to respond very carefully to any such proposal.

Mr. Davis: Thank you.

Mr. Chairman: Mr. Davis, could you make this the last point?

Mr. Davis: Yes, it is not a question I just to thank you. I am having a great difficulty understanding how the government, it doesn't matter who they are, Education Minister, it doesn't matter who it is, and the ERC, on a Wednesday decide that a student is not in jeopardy and, on a Thursday evening in a quiet meeting, all of a sudden decide the student is, and then order the teachers back to work.

I have come to the conclusion that it is political. And I understand, I certainly understand the concern the teachers have and boards have, that if you make some kind of definitive thing, they will all sit and wait. But with the movement in education more and more to semestered schools,

every time you read there is more. There must be some rationale that together we can come up with and says, okay, these are the kinds of things we should be looking for, these are options we can follow if there is a prolonged strike. And I am only talking about the prolonged strikes in your riding; I am not talking about the ten days or twelve days. And I have got a concern also for the general student.

It is interesting that my colleague in the NDP asked the delegation before us if there had been any surveys done. I would have assumed that he would have been aware that there has only been one. The ERC informed us that in the educational estimates. It was done in Sudbury. And all they did was track those students that went on to university. It did not track the student who was already experiencing difficulty, where teachers were already giving extra time. What happened to those students as they went through it? It is just a concern; I am not sure you can put it in legislation. Thank you for the comments.

Mr. Chairman: Mr. Allen?

Mr. Allen: Thank you very much. My Conservative colleague has appropriately introduced me as asking questions to which I do not know the answers. Sometimes that is the case and sometimes it is not. Many of my questions that I --

Mr. Chairman: The change in complexion, was it going door-to-door?

Mr. Allen: It was in the great province of Quebec on which occasion I had some marvellous conversations with some of your compatriots, Mr. Chairman, and learned a great deal, not least of all about education and politics.

Mr. Chairman: Thank you.

Mr. Allen: I really only have a couple of questions in addition to, after all that has been asked, in addition to complimenting OTF on their presentation and also for the appendices, which give us in somewhat more detail than I have recently the data around strikes and the progress through Bill 100 applications and the options that it provides and what has happened numerically year by year with regard to all those options. I appreciate having that very much.

There was one small question that I had and here my memory does fail me, you make a recommendation with regard to discharge and discipline for just cause. Would you remind myself and the Committee whether there is any reference to that in the Act at the moment or whether it is simply an inadequate reference and that is why you are

making the recommendation?

Mr. McAndless: I do not believe there is any reference whatsoever. It is the sort of thing that you have to negotiate into a collective agreement and we feel that just cause, and that sort of thing, should be covered in the Act. We believe that it was principally an oversight at the time.

Mr. Allen: I would suspect so and I hope so.

With regard to ERC and the additional resources to which you referred. I think you made a very convincing argument that many of the problems that hover around the application of Bill 100 in a given situation do derive from inadequate resources. What in your sense is the scale of additional resources that are needed by the Commission in order to satisfactorily perform its role? Any estimate of that in any broad stroke at all that you can give us?

Mr. Aylsworth: The inadequacy of the resources, Mr. Allen, is with reference to the funds they have available to pay third parties more so than with reference to their overall budget. And my sense is that at the present time the rates, the current rates, are insufficient to attract all of the quality people that they need. I am sure that the experience of other labour boards and of other institutions hiring third parties across the country could be used to get an estimate of how much more money is required.

Mr. Allen: So, it is a matter of rates and compensation, and not of overall budget allocation at this point?

Mr. Aylsworth: Yes.

Mr. Allen: Thank you very much.

May I assume, correct me if I am wrong, that you, like the previous delegation, are not happy with the proposals for collective bargaining that came out of the MacDonald Commission?

Mr. McAndless: I think that is a reasonable assumption, yes.

Mr. Allen: Thank you, Mr. Chairman. Those are all my questions I have remaining.

Mr. Chairman: Thank you very much. Any other members of the Committee who wish to ask a question? No?

In that case I want to thank the OTF for coming and presenting their brief. I am sure we will be looking at it

very closely.

Mr. McAndless: Thank you very much, Mr. Chairperson. We appreciate the opportunity.

Mr. Chairman: You are welcome.

Members of the Committee if you want to stay for a few moments we will go over the itinerary. If you all have it, if you want to put it in front of you; if you don't, maybe we can open the discussions on the travel.

Ms. Bryden, did you have a concern with the travel?

Ms. Bryden: Yes, Mr. Chairman. I also have an overall concern that Mr. Allen and I, who were added to the Committee for just part of it, were not informed of any plans for travel so that we have been sort of making evening appointments for the next week without knowing that we were likely to be out of town. I think somebody should have notified us more in advance that were plans for travel for next week.

I do have a problem with the April 1st in Sudbury. I have to be back here for an extremely important meeting in my riding and I have to be at the meeting at 7:30. So, whether there is any possibility of getting an early flight out to get me back here say by approximately six o'clock?

Mr. Chairman: Ms. Bryden, the clerk will check that out. We are sorry if you did not get all the warnings, but Mr. McClellan was here whenever we discussed the travel and made the travel arrangements.

Ms. Bryden: Well, this was really the old General Government Committee that made the decisions; was it not? Or he is also, of course, sitting on later hearings of this Committee during this break. But anyway, I think all the people who were going to be involved in this Committee during the break should have been notified of the decisions made. Whatever meeting was held, I certainly did not know there was a meeting held to discuss travel.

Mr. Chairman: Okay. Any other concerns about the travel arrangements that we have?

Mr. Allen: I think, Mr. Chairman, I do have a problem. I think we can between ourselves, Ms. Bryden and I can cover our difficulty. As things stand at this point in time I have to be in Toronto midday on 31st, but I have no problem being in Sudbury; whereas Ms. Bryden, I think, has a problem being in Sudbury but no difficulty being in Windsor that day. So, one way or another, I think, we can cover it.

Mr. Chairman: Okay. I appreciate your efforts.

Our second concern is not a great concern, but on Monday, April the 6th, in Ottawa we have the Association Francais Des Conseils Scholaires De L'Ontario who will be making a presentation and probably in French.

Now, our concern is that either we bring the people and the equipment from Toronto to Ottawa for translation or - and we are having problems with that - or we could maybe ask the Association to come to Toronto where we could hold it in Room 151. If anybody would propose --

Mr. Lupusella: I have a solution to make, but I am not that it will be a solution, for them to make the representation in French and to give us a written brief in English, even though I do not have any comprehension problem about the French language, but for those that do have a problem, maybe a solution can be found in that way.

Mr. Chairman: Mr. Lupusella, I appreciate that. I will ask the clerk to answer you on that.

The Clerk: I spoke to an official from the Association today who said he does not think that they will have time to provide a written translation. What we can do is provide a written translation through our own service later on, but it does not help at the time.

Mr. Lupusella: Okay. I have a Mr. L'Fontaine as an interpreter on that day and --

Mr. Fontaine: Not quite L'Fontaine, Fontaine.

Mr. Chairman: So, could I suggest that we have it in Toronto or does anybody want to give their opinion? Mr. Allen?

Mr. Allen: Not having been part of this particular discussion to date, what is the nature of the logistical problem and how serious is it in taking the translation team and equipment with us? And secondly, are there significant objections from ACSO to come here?

The Clerk: I guess at this point the major logistical problem with doing the translation in Ottawa is that the room we have for the meeting is quite small and probably not big enough for a translation booth. And there is difficulty getting another room on that day because there is a convention going on in Ottawa. I have not checked with them yet to find out whether they would be willing to come here because I was waiting to see what the Committee wanted to do.

Mr. Davis: I do not think we can do them here. Ms. Bryden?

Ms. Bryden: Well, we have I think a couple of problems. One is that I think we must be available to hear submissions in French, A; and B, the people presenting it may wish to have local people who are also French speaking attend. And to accommodate those two desires we cannot necessarily bring them to Toronto.

Is it not possible to hire some sort of French translation in Ottawa, perhaps in a different room, for that day, but with a service that would simply bill us rather than use our own equipment?

Mr. Chairman: That is a very good thought, but I believe we went through all this and the rooms in Ottawa are very hard to come by. That was my first thought too and the Clerk's office tried to change the location and that is very hard to do.

The Clerk: Aside from trying to change the location, we tried to get a bigger room to begin with in Ottawa. This was the last place we tried; we tried just about every hotel.

Ms. Bryden: Except for the booth, how many people will it seat, that is if you did not have translation?

The Clerk: It will seat 16 around the committee table and there will be audience capacity for 20.

Ms. Bryden: That would not accommodate a booth?

Mr. Lane: Mr. Chairman, do we not have a submission in French at all?

Mr. Chairman: No, we do not.

Mr. Lane: Could that not be received and translated before they present it?

Mr. Chairman: Well, we can ask them, but I do not think that their preference would be to make it public before they say it.

Mr. Lane: Tell them to come to Toronto then.

Mr. Reycraft: I was going to ask whether in trying to find an appropriate committee room in Ottawa the Clerk had talked to anyone involved with the House of Commons. I do not know whether that conforms to protocol or not, but it would seem to me that committee rooms must be there where translation services are available. If there is not a protocol problem, it would seem to me to be a viable option.

Mr. LuPesella: That is the best option.

Mr. Chairman: We can look into that, there is no problem there. We can do that and then maybe discuss it again tomorrow if we have any further news. If that is okay we will try to work something like that.

Ms. Bryden: We could go to Hull.

Mr. Chairman: You want to go to Hull.

Ms. Bryden: Either Hull.

Mr. Chairman: Okay.

Mr. Allen: Are we talking about shifting one delegation or are we taking about cancelling the whole Ottawa... ?

Mr. Chairman: For the French delegation either we bring it to Toronto or we do something special for it.

Mr. Allen: But we still go to Ottawa?

Mr. Chairman: Yes, we still have to go to Ottawa.

Mr. Allen: Could I suggest that we make at least one more effort to get a satisfactory location to do it there, that would be much better all around if we can do it. If not, perhaps as a contingency the Clerk might well enquire as to whether they would have any objection, if we cannot find a space, in coming here to Toronto so we can have a full French session. Then we will have at least some sense of what the alternative is as well.

Mr. Chairman: It seems at this point to be the consensus of the Committee and that is what I will try to attempt to have done. Ms. Bryden?

Ms. Bryden: This may be setting a dangerous precedent, but whether we should also offer to pay for two people to come down because of the fact that we are not able to provide translation services, two or three people, whatever is considered reasonable, whatever number they had planned to put before us.

Mr. Chairman: Yes, I am sure the Clerk's office would look into that. Also the fact that in 151 it is televised. It will attract more people that way.

Ms. Bryden: That is a point. If you could get 151, you know, you could say that your audience could be alerted.

Mr. Chairman: Thank you very much. At this point we will adjourn until tomorrow at 10:30 a.m.

The Committee adjourned at 4:18 p.m.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

SCHOOL BOARDS AND TEACHERS COLLECTIVE NEGOTIATIONS ACT

TUESDAY, MARCH 24, 1987

Morning Sitting



STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: McCague, G. R. (Dufferin-Simcoe PC)

VICE-CHAIRMAN: Guindon, L. B. (Cornwall PC)

Allen, R. (Hamilton West NDP)

Bryden, M. H. (Beaches-Woodbine NDP)

Fontaine, R., (Cochrane North L)

Lane, J. G. (Algoma-Manitoulin PC)

Lupusella, A. (Dovercourt L)

McKessock, R. (Grey L)

Offer, S. (Mississauga North L)

Pollock, J. (Hastings-Peterborough PC)

Sheppard, H. N. (Northumberland PC)

Substitutions:

Davis, W. C. (Scarborough Centre PC) for Mr. Sheppard

Johnson, J. M. (Wellington-Dufferin-Peel PC) for Mr. McCague

Clerk: Deller, D.

Witnesses:

From the Peterborough County Board of Education:

MacLellan, H., Chairman

Millard, P., Vice-Chairman

From the Association of Large School Boards in Ontario:

Nelson, F., President

Corbishley, J., Chairperson, Salary and Collective Agreement Committee

From the Muskoka Board of Education:

Green, M. R., Chairman

Rowe, M., Trustee

Whitfield, C. R., Director of Education and Secretary

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday, March 24, 1987

The Committee met at 10:37 a.m. in room 228.

CONSIDERATION OF REVIEW OF THE SCHOOL BOARDS AND
TEACHERS COLLECTIVE NEGOTIATIONS ACT
(continued)

The Vice-Chairman: Good morning, ladies and gentlemen and welcome to the Standing Committee on General Government. We are reviewing Bill 100. The first deputants are from the Peterborough County Board of Education. We have Mr. Hugh MacLellan, Chairman and Peter Millard, Vice-Chairman.

Welcome gentlemen. If you want to come forward. So that your comments can be registered for eternity for the good of the free world as we know it, just speak to the microphones as much as possible. Go right ahead.

Mr. MacLellan: Thank you, Mr. Chairman, Honourable Members. I am Hugh MacLellan and with me is Peter Millard, the Chairman (sic) of the Board. And first of all we would like to thank you for the opportunity to appear before you and present our views on Bill 100. While we are quite certain that you will not hear anything strikingly new in our presentation, we do feel an obligation as a Board to express our opinion and frustration with the Act and hope that anything that we have to say will reinforce other presentations that you will hear or will have heard.

We have tried to illustrate our presentation with examples and experiences that we have gone through, and certainly I think all the examples that we have used are within the most recent past -- a month or two months.

Certainly no other group of employees is better protected than your Ontario teachers. They have all the rights and the privileges of a collective agreement negotiated with their Boards and they also have an individual contract with the Board. The teachers have an accumulation of legislation that was designed to protect them before collective bargaining, which has been left there, giving them what privileges that few groups have; for example, sick leave. They are covered by the Ontario Labour Standards Act and by human rights legislation. Through the Education Act they also have access to a board of reference which is an extremely powerful tool.

Mr. Chairman, we believe that there is an awful lot of security here, and we also believe that Bill 100 should apply only to day time classroom teachers and that the

individual contract between each member of this group and the Board be discontinued.

We maintain also that the time lines under this Act are much, much too long. Most of the time that is spent negotiating under the Act is unproductive, and the time spent takes away from the regular obligations of teachers, senior administrators and trustees. It is not uncommon for the negotiations to go on for the entire school year, and we have illustrated our case with the Elementary Teachers' Federations last year where we received the notice or desire to negotiate at the end of January. We went through the processes of receiving their brief in May.

We had not had a settlement in to the fall so in October we had a fact finder. The fact finder's report was received in December and the groups met in January to try and reach an agreement. That was unsuccessful so we requested a mediator and met with a mediator and reached an agreement in February.

Now, in the meantime, we had received notice to negotiate again with the same federation, so in effect we were engaged in two sets of negotiations for two different years with the same federation. And this is certainly not the exception. We had a parallel case with the secondary teachers at the same time. We settled just strictly before that. So with the two federations we were negotiating for more than the whole school year.

Part 1, Section 2 of the Act states that the purpose of the Act is "the furthering of harmonious relations between boards and teachers," and we find it difficult to imagine that anything other than adverse feelings can exist in schools with negotiations hanging over the teachers for the entire year.

The Act has a definite starting point but no finish, and I think in fairness to all there no incentive for either party to settle. Each waits for indications from the rest of the province to see how they are doing and what the trends are in settlements.

We believe that negotiations should commence on January 31st and be geared to a settlement by June 15th of the same year. This allows ratification by both parties before the summer break and keeps the start of the new year free from the problems of teacher and Board negotiations.

Also contributing to the length of the negotiations is the role of the fact finder. Although the original intent of the fact finder may have made sense at the time, it really now has been incorporated as a part of the process and we believe has outlived its usefulness. Again, in fairness to both parties, each hopes for a report favourable

to their side so they can use it as a lever in negotiations. We believe that fact finding should be removed from the process.

Principals and vice principals are part of the management team and we believe as such should not be members of the federations. Where else would you have a plant manager and assistant plant manager as part of the union? We suggest that this is a unique and undesirable position in which to place management personnel and the pressures to be loyal to the federation and to do a good management job must be very great.

This principle also extends to the middle and senior management personnel who are not supervisory officers. This Board is currently facing a situation where a federation has launched a grievance insisting that coordinators, a middle management position, should be members of the federation.

Now, given that the qualifications and training of these positions are that of a teacher, the Board is again in a position that a member of the management team could be a member of the federation. And to carry this even further, Mr. Chairman, this Board has chosen to have a superintendent of personnel to handle the personnel role and to be the Board's chief negotiator; that is, a qualified teacher with or eligible to have supervisory officers' qualifications.

Now, we have recently hired a replacement for this position who is presently in the process of writing qualifying examinations. Should the Board be unsuccessful in the grievance regarding a coordinator, it is conceivable that we would also have a chief negotiator whose is a member of the federation as being negotiated with and subject to all the provisions of the collective agreement including a strike. Now, we feel the Act should be clear on who is excluded and because of this, we request that exclusions under the definition of "teacher" in the Act be extended to cover a situation where a teacher is part of management.

The Board believes that the teachers should have the right to strike, but it also believes that Boards should be in an equal position to impose sanctions. We believe that as soon as the teachers are in a position to strike, Boards should be in a position to lock out.

In closing, Mr. Chairman, we would like to say that our Board is concerned that the Ontario government is allowing boards of education to negotiate away management rights. Not only do we have to negotiate the eligibility of an item but we have to negotiate that item itself, and little by little the right to manage is being eroded and transferred from the trustees and the senior administrative staff to the employees. Indirectly we believe that this is removing the control of local education from local

residences, a tradition that has existed in Ontario schools since its inception.

Thank you again for the opportunity to present our views to you, and Mr. Millard and I would be happy to attempt to answer any questions that you may have for us.

The Vice-Chairman: Thank you very much, Mr. MacLellan, for the frank discussion and brief. We have some questions for you. I believe you are ready to accept them from what I understand?

Mr. MacLellan: Yes.

The Vice-Chairman: All right. We will start with Mr. Lane.

Mr. Lane: Thank you, Mr. Chairman. Mr. MacLellan, I get the feeling you sort of feel that the Bill has rather serious flaws at this time -- the present Bill?

Mr. MacLellan: I guess we have six main points here that we do feel it is flawed. I think the biggest concern of ours is the time frame that is involved in that there seems to be an awful lot of time spent negotiating. We just think that this time could be shortened up. That, I think, is a serious flaw with the Bill.

Mr. Lane: Could you explain more of what you mean when you say, "We believe that Bill 100 should apply only to day time classroom teachers and individual contracts between each member of this group should be discontinued"? Could you explain what you mean there?

Mr. MacLellan: Yes. We do not believe that Bill 100 should apply to night school teachers, to summer school teachers and to occasional teachers, and we also believe that the individual contract that the teachers sign with the Board is out of date. For example, they are only allowed to be terminated at two points; I believe it is December 31st and August 31st of the year.

We are all on the semester system now where our first semester ends at the end of January and the other at the end of June; so it has not kept with that type of thing. It has problems, I guess, with a probationary teacher where you have to have a contract in the hand of a probationary teacher before they go into the classroom. If you have not, they are deemed to be permanent contract teachers with all the privileges associated with them.

In addition, you can get into a bit of a bind if you overestimate your student population. We do that in the spring before the September year starts and hire accordingly. If you overestimate the population of the

students that you have coming in, you could conceivably be left with teachers that really you do not have any work for, yet you are bound by a tight contract. If the contract is missing then they would be subject to the collective agreement which takes care of that type of thing.

Mr. Lane: Thank you. Number 4, I notice you indicate that your feeling is that principals and vice-principals are part of the management team and should not be members of the federation. Yesterday we were hearing the opposite. You feel quite strongly about that I assume?

Mr. MacLellan: I think the education community is probably split down the middle on that. We just see that they are part of the management team, and as such, should not be members of the federation, I guess for the reasons that we give there.

Mr. Lane: Thank you very much, Mr. Chairman.

The Vice-Chairman: Mr. Pollock?

Mr. Pollock: Mr. Chairman, and through you to the two gentlemen at the desk, I want to put it on record to welcome them here. Mr. MacLellan is a constituent of mine. Very seldom do I have a constituent from my large riding ever make it to the committee table here. And I think you have got an excellent brief.

And, as I say, there are a few things that I think are worth noting and that is the time frame. I agree with you hundred hundred per cent that time frame starting in January and going to the end of June would be lots long enough for any negotiation procedure. I never had the pleasure or displeasure of sitting on a school board so a lot of this is new to me so I am certainly interested in your comments.

So I guess I have no direct question, Mr. Chairman, other than to welcome these two gentlemen here.

The Vice-Chairman: Very well. Mr. Davis?

Mr. Davis: Thank you, Mr. Chairman. Thank you for coming and presenting the concerns of the Peterborough County Board of Education. I just have a couple of quick questions. You state that negotiations should commence on January 31st and end on June the 15th. What happens if there was no resolution on June the 15th?

Mr. MacLellan: Well, I think what happens now, if there is no resolution at the end then the teachers can take a vote on the final offer and the right to strike, and we believe that that should take place before the school year ends.

Mr. Davis: What is your feeling on the statement that has been bandied about lately that if there is no contract on the 31st of August then the teachers should not go into to classroom on the opening day of September?

Mr. Millard: If I can go back to that former question, obviously if the two parties agree, otherwise I think you can continue on. If you are within a minute fraction of coming to a settlement, I think you can continue on.

But what we are saying is you have to target to that end date and you have to do all your third party intervention in fact before that end date because you would not even get to June 15th. So we do not know those time frames; we cannot delay anything that well. But we are suggesting that fact finding disappear, as Mr. MacLellan says, as part of the process. The mediator will probably come on a month earlier so you could make that June 15th date, and you would have a vote. At least you would know where you were at.

Or alternatively, I suppose you could mutually agree to extend. I mean, it would be foolish to say you could not if you were within an inch of settlement. But you have to put some pressure to make that end date come. Indirectly I think I have answered your question because obviously you are going to let them in if you that is going to come about. But if you are miles apart, I think you have got to call a spade a spade. Either they do or we do.

Mr. Davis: In the Matthews Report, which was the report done five years after the implementation of Bill 100, John Crispo places a descending kind of response to the main thrust of the fact finder, and what he suggests is that the fact finder should only be engaged by both parties at the end of the negotiations -- that would be August 31st, just prior to the time that the negotiations break off only if both parties agreed. And then certainly if there was a strike, immediately once the strike took place. But up until that point the Boards and the teacher federations should use a mediator instead of a fact finder.

What I hear you saying is a fact finder has really become a role that is not conducive to bringing about an early settlement. Would you have any concern about the fact finder coming in at a later point right near the end of the negotiations until August 31st, say if there was some way you could sort it out before?

Mr. Millard: I think I do not see any useful purpose. It seems to me the mediator is the fellow that really plays the game and tries to force you to settle; the fact finder just crystalizes the issues. Well, if you do not know what the issues are by then, you should not be in the ball park.

Mr. Davis: One other question. Presently, I am aware that your time line is short, that negotiations very seldom take place during July and August. Probably the latter part of August they come together because August the 31st is the T-day. Do you believe that the legislation should somehow address the fact that in July and August negotiations should continue on, regardless of what you have got here, assuming that there is not support for June 15th and the process stays as it is? Do you think legislation should address the fact that it is an expectation that negotiations continue in July and August?

Mr. Millard: I think from a trustee's point of view, we would say "Yes" to that. I think the problem would be on the other side. I think probably it would be very hard for them to get their team together because I think, in fairness, most of them knew that the summer is theirs and it has nothing to do with anything else. But actually that would -- If you ignore our June 15th -- and I think that is a better time -- obviously our next request is August 31st. What we are trying to do is beat the start of the year.

Mr. Davis: Okay. Thank you, Mr. Chairman.

The Vice-Chairman: Ms. Bryden?

Ms. Bryden: Mr. Chairman, I would like to welcome the Peterborough Board of Education and their representatives for bringing us their views. That is what we are here for, to try and see if the Act is working or if it needs fixing.

Regarding your comments about principals and vice-principals that they should continue to be excluded from going on strike, since the right to strike is something that you did endorse for other teachers, do you not think it is unfair to exclude such a large group from the right to strike as the vast number of principals and vice-principals across the province, they really are part of a team with the teachers; they are not strictly management -- the Board is management -- and they could not operate the school on their own even if they got parents and volunteers to come in. It probably would not be very effective or even very safe to have a sort of part-time staff trying to operate it.

So it seems unrealistic in regards to the principles of the right to strike and true collective bargaining under Bill 100 to continue to exclude principals and vice-principals from the right to strike. Have you had any thoughts about that, what that might do to the strike situation if they were allowed to go out?

Mr. Millard: I think our main thrust is that they should not be in the union; and once you decide that, if you agree with this, on the part of management, they are no

different than any other manager, whether it be an SO or a supervisory officer or anyone else. And I suppose if it had an informal association, you could even unionize management into a different union.

But I think our main thrust is they have to come out of the federation because, in fairness, they are your frontline managers if I can call it that. They are your man that is on the floor if you equate it to a factory. They are your man that is on the floor. And I find it always hard, at least our Board does, I think, to understand the arguments as well as others do, why they should be part of the union.

A good example -- very good example -- and I think you hear it all the time -- is why can you not get rid of the bad apples? Let us be honest; every place has a bad apple -- every profession or every work place. And the reason, one of the reasons, I think, is first of all there is some sort of persuasion, if I can call it, on them not to even give a report on somebody that they feel is a bad apple.

But second, even if they are prepared to take the bull by the horns and do such a report, it is our understanding and belief -- and I believe it is correct -- that that report goes to the federation before the trustees and the directors see it. That is totally absurd in my view and our Board's view and that is about the most concrete example you can give. When the union themselves decide basically whether we can see a report on a bad teacher, I think that is the most dramatic.

And the second, even if you have a strike, you are third, caught between a rock and a hard place because they have to stay on and they get full salary and the whole ball of wax if there is a very union that is walking around out in front of the school. To me that is an incongruous position for them.

I think you have to look at schools as being a factory, basically, with a lot of branch plants. Like, in our situation we have got about 38, 39 elementary schools and about eight high schools, and I think they are your managers of each one of those branch plants. It is impossible. And they are your front line people; they have to manage. And when they are in the union -- let us put it nicely -- there is moral suasion on them that they should tow the line, I think, and it is very difficult to manage in that situation.

Mr. Pollock: Just a supplementary to that. Is a job description of a principal -- is his job description as a manager? His job description would be a manager or --

Mr. Millard: I think it is more management. I think there are some people that argue that, but I think it is much more management.

Mr. Pollock: Even though if sometimes he does teach? There is a break down of...

Mr. Millard: That is obviously more true in the elementary level, especially with the vice-principals as opposed to the principals. But in theory these people are all aspiring and learning on the job and they are being trained to be managers. And so I think I would even exclude them, the vice-principals, as well. In the high schools I do not believe any of them teach. Maybe I am wrong on that but I do not think any of them do.

Mr. Pollock: Thank you, Mr. Chairman.

The Vice-Chairman: Ms. Bryden?

Mr. Bryden: In response to what Mr. Millard said, I am uncomfortable with the idea that schools should be regarded as factories and that principals and vice-principals should not be part of a collegiology, really, with the teachers and their interests are the good of the pupils and the operation the school. But the principals do not hire and fire.

And as far as the business you mentioned about the reports on them going to the federation, it seems to me that if any individual is having an assessment made, that he has a right to see it and he can then show it to his union if he wants. But that is about the only managerial function that they may have is to make a report on an individual.

But I still think it is a very large group of people that were intended to be covered by Bill 100, and are covered by it, but only in a very specialized sense. And it seems to me it is time to take a look at that exclusion of that large number of people from the right to strike. I do not know if you want to respond or whether I should go on to my next question.

The question also in your Item 5 about some supervisory officers should be considered part of middle or senior management, can you give me an example of what sort of a person would be considered a supervisor or officer that you think should be excluded from the bargaining unit?

Mr. MacLellan: Well, I think, Mr. Chairman, we have two examples there where we have a coordinator of special education that is a management position. He organizes and supervises people in the field. That is one example. The other is the superintendent of personnel who we would like to have as our chief negotiator, and we think it is

important that our chief negotiator be a person who understands the language of schools and of teachers.

It is very important, I think, to have a person like that, and, as I say, if we lose this grievance on the coordinator then we cannot have this type of person as a chief negotiator, at least not until he is excluded or she is excluded from the Act by qualifying for supervisory officer papers.

Ms. Bryden: Well, I can see there is some difficulties with the personnel person, but as far as coordinator of special ed, you must have a coordinator of perhaps physical ed or of part-time evening classes and things like that. Do you want to exclude all of those people who may have a special interest in one aspect of the school's activities but are still part of the teaching team even though they are not daytime classroom teachers? Are you trying to exclude an additional group that could be designated as supervisory over certain sections of the program?

Mr. MacLellan: One of the important factors for us is that a person in this position really has to work the full year. Being members of the federation and subject to the collective agreement, they would only be ten-month people.

Ms. Bryden: Well again, part-time work, as you know, is becoming much more common and you may have a considerable number of part-time people engaged in the adult education activities of the schools, either evenings or daytime -- part time -- perhaps upgrading for people who are unemployed and things like that. Would it be a serious problem for you if part-time teachers were included in the bargaining unit?

Mr. MacLellan: Where part-time teachers were?

Ms. Bryden: Yes.

Mr. MacLellan: Yes, I think it would, Mr. Chairman.

Ms. Bryden: Well, in what way?

Mr. MacLellan: Well, for one thing I think it would be -- Well, part-time teachers are included in the collective agreement now teaching part time in schools and that is satisfactory; they are daytime classroom program teachers. You mean the night school and this type of thing?

Ms. Bryden: Things of that sort, where they are brought in perhaps when the heritage language program is going on.

Mr. MacLellan: We can foresee problems, first of all, that I think it would be more expensive to Boards to have

them included as members of the collective agreement. In addition, although it is in not too many collective agreements, it is tradition that teachers, for example in secondary schools, teach 75 per cent of their time. In non-semester schools they would teach six periods out of eight periods and in semester schools, three periods out of four.

Now, we could perceive perhaps that they would choose maybe to have a night time course, if it was a credit course for example, as part of their workload, and I think this could involve problems for the Board.

Ms. Bryden: Well, you say it would be more expensive. I mean, that is the main reason why employers use part timers so that they do not have to pay benefits, so that they are not in the bargaining unit and therefore they do not pay at the same pro rata hourly rate as others. But if part-time work is going to be recognized it should get pro rata benefits, and it will not get that if they are outside the bargaining unit.

Mr. MacLellan: I think teachers are very well paid and they work hard for their pay as well. The daytime teachers are involved in extra curricular activities -- they coach the basketball team, they do this and that -- and that is all in there in their pay. Whereas the night school teacher is strictly there to teach the course -- not involved in any extra-curricular work at all.

Ms. Bryden: But they should get things like sick leave and vacation pay? She has to get vacation pay under law, but does she get any benefits?

Mr. MacLellan: Just those by statute -- the vacation pay.

Mr. Bryden: Thank you, Mr. Chairman.

The Vice-Chairman: Mr. Johnson?

Mr. Johnson: Thank you, Mr. Chairman.

I would like to deal with 2, 3 and 6. Two, that negotiations should commence on January 31st and be settled by June 15. That would be an excellent suggestion and I am sure that both sides would agree to that, but how do you bring that about?

I went through the Wellington teachers' strike two years ago and that was 11 weeks, 51 school days. And in my opinion -- I should not say "my opinion" -- but in the opinion of many of the people, certainly the parents, they felt that both the Board and the teachers were responsible for delaying the strike, that it was not one side or the

other; it was a combination. So how can you ever hope to achieve a perfect settlement by June the 15th?

Mr. MacLellan: I think perhaps you may not obtain the perfect settlement by June 15th, but it would speed the process up a lot and you would have that time between June the 15th and the start of the new year to try and get a settlement -- to mediate; get a mediator in there and try and get a settlement.

Mr. Johnson: Well, the thought is great and I certainly would support it, but --

Mr. MacLellan: -- the practicality of it.

Mr. Johnson: -- but I think there has for be a little more give and take and a little more goodwill on both parties to achieve that perfect...

Under three, Item 3, that fact finding should be removed from the process. Are you familiar with the Matthews Report?

Mr. MacLellan: Just parts of it, sir.

Mr. Johnson: Recommendation number 27 is six sections dealing with the Commission's recommendations to amend that part dealing with the fact finding. It would seem that they place a lot of importance in the role of the fact finder. What problem did you encounter in '86 with the fact finder?

Mr. MacLellan: Well, it is not so much in '86; it is over the last six years that I have been involved in it. To me, it may have made sense when it came in originally, to put the facts before the public before there was a problem with a strike. But now both sides really use it. When there is no settlement, the fact finder is called and the report is made, and both sides look at it and say, "How do I look? How would I look in the eyes of the public if this were made public?"

Mr. Johnson: Why would that not be a good idea? Should the public not know the position of both sides?

Mr. MacLellan: What I am saying is the Boards or the teachers use this as a lever when they sit down again to negotiate.

Mr. Johnson: If the decision of the fact finder was to try to determine the facts and lay them in front of both sides and say, "The Board should give them this and the teachers should give them that"; is that not the case?

Mr. MacLellan: They make recommendations in some cases; not in all. They may make recommendations on

proposals that are put forward but not on all.

But I guess the period that I am thinking about is the 15 days that you have from the time that you receive the fact finder's report and the time that it can be made known to the public. In that time, if you look or were going to look bad before the public, then maybe you would be more apt to try and get a settlement, to compromise maybe your position to get a settlement before you went before the public. And I think that goes for both sides.

Mr. Johnson: Since it so drastically affects the public -- certainly the parents -- I would think that the more public it is, the better, and if one party is being offset then let it show.

Mr. MacLellan: Do you have any views on that, Peter?

Mr. Millard: Well, in theory I agree with what you are saying, but what is going on now with the time frame, you give a letter. What actually happens? You give a letter in January that you intend to negotiate. Then what happens is everybody marks time for the rest of the -- right to June, basically. They will have a few meetings but basically -- and this is changing for the worse as far as I am concerned.

This is my seventh year on the Board and when I first started, it seemed to me we met a lot more in the spring than we do now. It seems everybody is delaying the process now waiting for the fall to see if any settlements are coming down. What we are trying to do is crush that and prevent getting into the next year, as Mr. MacLellan said. And anything you can do to do that, I think, is for the better.

Certainly the fact finder crystallizes the issues and then goes public, but I do not see why -- when the two sides know the issues anyway -- they can not make it public without having to wait for a fact finder.

I do not think you should negotiate in press either. I do not want to get into that, but I think once you get to the stage where you are going nowhere and you are ready to call in a mediator, I think that should be forced on you much quicker. If you do not put some pressure on the people to make some settlements without looking over their shoulders and seeing what else is going on around the province -- everybody marks time now in the spring and they know the summer is coming up.

And that is a big problem with this as far as I can see, the summer being off, as was mentioned before. And even a few who did negotiate in the summer, there is nobody there to have a vote on it. Maybe the board is but the

teachers are all on holidays and they cannot even vote on it until they are back.

So you enter into a new year already with the children coming back without a settlement. Almost inevitably in all cases -- I have have not got the percentages but I am sure that is probably in 90 per cent of cases. We are saying that is bad because by the time you go through the fact finding process which, as we believe, they incorporate it as part of the process. And we do too; I am not just putting the finger on them. Everybody is hoping they get the better fact finding report and then they use that as part of the system.

It is not doing what it was intended to do, as Mr. MacLellan said, just crystallize the issues and inform the public. What it is doing now is each party is trying to hopefully be able to use it as a sword.

And I find also the fact finders are now becoming half-ways mediators. So why not just cut it out, go to mediation and let everything come out public; that is fine. We do not need to know what the issues are; we know what the issues are. And what happens anyway, once a fact finder report comes out, is we are going to -- despite what he said -- we are going to what we think about it and they are going to say what they think about it. I just think it prolongs the process and really serves no real useful function. A mediator calls them in a lot quicker and get the sides forced to settle somehow.

Mr. Johnson: Well, I certainly concur with your thoughts; in moving it up, the process can be shortend. But I do feel that the fact finders play an important role. Each side has a decision. The fact finder could come down heavily on one side or the other. Surely that should give some thought that possibly one side is off-base.

But anyway, if we move to Section 6 where you request the lock-out. And I think in the report of Matthews in the third recommendation that he recommends Bill 100 be amended to provide the Board the right to impose full or partial lock-outs at the same time under the same conditions that the teachers have the right to strike. So at least Matthews concurs with that thought. Thank you.

The Vice-Chairman: Mr. Allen?

Mr. Allen: Thank you, Mr. Chairman. I thank the Peterborough Board for coming and helping us with the process involved in re-examining the Bill and seeing whether there are indeed useful changes that might be made.

I do not have any additional questions other than with respect to number one. My colleague raised a question in

that regard though, and I wondered what your alternatives were.

As you know there has been some judgments in the courts with respect to what kind of bargaining arrangements should prevail with regard to adult education teachers, night class teachers, teachers in somewhat unusual teaching situations -- not formal schools in the normal sense of the word -- and so on. But you seem to be excluding them from Bill 100 and I am just wondering where you want to put them or do you just want to leave them as casual labour?

Mr. Millard: I do not think that is a fair comment. I think our point is that there are layers, if I can put it that way, layers of protection that no other employee group in the whole of Ontario and probably Canada has. They have the individual contract. They have Bill 100. They have the Education Act. They have the agreement that is entered into by the union on their behalf.

And I use the word "union" advisably. It was interesting too that ten years ago they did not like to be called "union" people, but now they are quite proud of it. In fact, I think they have been recognized by the Ontario statutes in that regard.

It is just that this layering effect, you do not know which way you are going. And why should they have rights that other parties do not have, like the Board of Reference in the Education Act. That is if they are trying to dismiss a teacher. That seems to me that it is not right that they have so many different layers of protection, and as you know, whatever choices are taken, they are all expensive and I just do not understand why this one group should be so privileged to have say four or five layers of protection. I do not think it is necessary.

Mr. Allen: You are referring to teachers as a whole in your comments right now?

Mr. Millard: Yes.

Mr. Allen: But if you have, in fact, groups of teachers who perform different roles in the system nonetheless, and in some parts of the province, as you know, the adult education and night classes sometimes constitute enrollments that are at least as large as the day school -- normal day enrollments -- do, and you have a teaching course that is not simply coincidental with your day teachers.

What I do not understand is, while you might object to the layers of protection that teachers in general have, you are either going one of two ways. You either logically have to initiate a drive to get rid of those layers, and if that is what you are doing, then I am not with you. On the other

hand, the other logic of the situation is that those other teachers ought to be involved in the same protection. So I am not sure which logic you are trying to press us on.

Mr. Millard: Okay. I did not address the question you were earlier asking. I guess with respect to night time teachers and occasional teachers, I think they have to have a different negotiating process. I think what happens if you bring them in with the day time teachers you have that other factor.

A daytime teacher, in fairness, is strictly -- it is a whole day, as Mr. MacLellan said, and I would like to think they are going to partake in the extra-curricular and the preparation -- what have you -- that a goes on even in the supervision of students. I think at night time you are dealing with more of a mature student where the teacher is coming in and if he wants to come in one minute before the class starts and leave one minute after, it is more of a -- let us equate to a community college-type atmosphere as opposed to a high school or elementary atmosphere. And I think it is a different kettle of fish.

If they are brought into this Act I think you will find that they obviously bargain as a group as a majority and the majority are the daytimers. And I do not think it is the same job; it is a completely different job. I just think the numbers do not work when you think of the different viewpoints they have, and I think they should be represented from different groups. I do not mind them having a union, if that is what you are asking me, but I do not think it should be the same one that is for the daytime teachers.

Mr. Allen: What you are saying essentially is that they have different kinds of responsibilities and the range of their involvement is different. But I do not understand why that means that there is something improper about OSSFT or whoever is bargaining for them as genuine teachers as defined under the Act. But the bargain, of course, in the contract would presumably have to relate to their specific circumstances and situation and then address itself to that. It would not necessarily mean a total submersion in the larger contract of the teacher group and so that everyone was viewed as though he were in fact on the same platform regardless of whether you were teaching day or teaching night.

Mr. Millard: In theory you are right; it could work, but only if the night timers, if I can call them that for the sake of argument, they have a vote on their separate area. When we lump them all together it just does not work.

I think that is one of the problems with the principals and vice-principals being in now. They are also

negotiating for them. They have a different interest, to a degree, especially on, say, responsibility allowances, and they may not be too happy with what is going on. But in the whole vote they get swallowed up, and if the teachers are happy, they can be well out-voted.

And vice versa; it works both ways. If you could segment down the vote, maybe I would go along with that you are saying. I do not have objection to that group bargaining for them, but I do not think the group as a whole should vote for that segment of the contract. You have got to have some differentiation there.

Mr. Allen: So what you are telling me is that you do not have a problem, for example, with OSSTF bargaining for teachers in night school situations as long as they bargain for them as a group?

Mr. Millard: And only that group votes.

Mr. Allen: As an identifiable group. That is your position?

Mr. Millard: Yes.

Mr. Allen: Okay. I was not sure whether you were telling me you did not think it was proper for OSSTF to be involved in the bargaining at all, or if so, on what basis.

Then I would conclude that in an institution such as Humewood House in Toronto, which is part of a recent Divisional Court decision, that again you do not have any problem with a teacher organization bargaining for those teachers as genuine teachers as defined under the Act?

Mr. Millard: No. Again I guess it goes down to segmenting the groups. I do not think you can lump everybody in and call them all the same thing when they are doing different jobs, at least in the my view they do different jobs.

Mr. Allen: Okay. Thank you.

Mr. Vice-Chairman: Thank you very much, Mr. Allen. And thank you, Peterborough Board, for coming -- Mr. MacLellan and Mr. Millard. We appreciate your taking the time. Thank you very much.

Mr. Millard: Thank you, Mr. Chairman.

The Vice-Chairman: Our second group is the Association of Large School Boards. We have Fiona Nelson, President and Judy Corbishley who is the Chairperson for Salary and Collective Agreement Committee. Welcome to the committee. Whenever you are ready you may start.

Ms. Nelson: Thank you, Mr. Chairman. I am Fiona Nelson, the President of the Association of Large School Boards, and we are very grateful for the opportunity to appear before your committee.

The Association of Large School Boards represents 17 of the largest public boards in the province and about 700,000 day school pupils. As a result, we have among our members, boards that have had very large and complicated collective agreements -- very protracted negotiating processes involving 43,000 teachers and about 18,000 support staff. Our total budgets has been over \$3 billion -- last count about three and-a-quarter billion dollars.

So I think that we have a fair range of experience that might be useful to you in looking at Bill 100. We have been identifying concerns with that Bill for some time and we had a task force working on proposals for amendments since 1984. And Trustee Corbishley has chaired that group and so is very familiar with the proposals that we are bringing forward.

We are very glad in a way that Mr. Davis' Bill has opened the door because we have been attempting to get some changes made to that Bill for some time. Since it has been in force for over ten years, I think the time has come for a revision. And based on the experience of our members I think there are some proposals we could offer that would be of assistance to your committee.

As you know, Boards negotiate locally except in the case of Metropolitan Toronto where they negotiate jointly. But we are not talking about scrapping the Bill in any way. We are, however, talking about bringing it in line to meet the needs of Boards and teachers as they currently exist. We have identified four major areas of concern and a few related ones that we think will be useful to you.

We do want to stress that we think it is important for you to understand that we do believe teachers have a right to strike. We are not at all interested in forcing strikes by a certain date. That does not seem to us to be at all useful to the process. There does seem in some sets of negotiations a requirement for a certain fermentation period for some things to come forward, and an artificial closure we think might not be in the best interests of a good collective agreement.

Also we are concerned about the resources of the ERC. If everything culminated on a certain date, I suspect they would have to do some rather significant things to their staff to find sufficient staff to cope with such an enormous peak in their work load, and I think that is something that we should be concerned about.

I am just giving you some very general remarks here. We are talking specifically about Bill 100, not about the Teaching Profession Act or anyway of the other Acts, so we are going to restrict our remarks to that. And for the details of the workings of our committee I would like introduce Trustee Corbishley.

Ms. Corbishley: Thank you, Fiona. You will have to excuse me. I am recovering from that walking flu. We appreciate the opportunity to present the ALSBO position, which may incorporate some of the other suggestions that you may have already heard. But we want to assure the committee that our ultimate aim is to ensure that the students of Ontario are not penalized by a collective bargaining process that does not encourage an acceptable settlement within a reasonable time frame.

In our brief we have proposed a time model and it is only that; it is a model. We are not presuming to suggest to the committee how they should write legislation, but we figure if we have some time frames then the committee would have an idea of how we would foresee the legislation coming down.

Shortened time lines for negotiations, the present process does take far too long. Contracts are coincident with the school year and it is good for the Board, good for the students and I think good for the teachers, for a settlement to be in place if not by the end of June, at least by the beginning of the school year.

Therefore, once notice to bargain has been exchanged, it should be incumbent upon the parties to exchange briefs as reasonably quickly as possible. We found that in the Salary Committee of ALSBO we have reports of school boards taking as long as six months to receive briefs from the affiliates, and this does not lead to good collective bargaining or an acceptable settlement or good employee relations.

Third party assistance is something that we believe should be mandatory -- specifically mediation. It is currently not mandatory and it is currently only available should both parties request it. We feel that either party should be able to request mediation at any time during the process. If a settlement has not been reached say by the middle of September, then mediation should be mandatory. The mediator should have sufficient time to work with the parties before impasse is declared.

Both parties have indicated that they are unhappy with the process of fact finding. Most Boards would prefer that it be eliminated, but we feel that if it remains in legislation it should click in after impasse has been

declared. The report could set out the areas of concern, the areas where agreement has been reached and where disagreement still lies. It might help encourage the resumption of negotiations if it is made public after impasse has been declared. The public's right to know is one that should be kept in mind. However, it has been our experience as politicians, if you will, that the public interest in fact finding reports has been minimal.

We feel that there are not parallel rights under the current legislation. We feel that Boards are put in a position of having to wait for teachers' response before they can take action and sanctions. We feel that the legislation should perhaps mirror the Labour Relations model which provides equal rights to impose sanctions after impasse has been declared. They should have the right to change the terms and conditions of employment after impasse has been declared and the appropriate votes have been taken.

In the private sector, employers can initiate a final offer vote on a one-time basis. This forces the other party to report formally to its membership on the final offer made by the employer. ALSBO believes that an ARC supervised final offer vote could be called for by either party at any time after impasse has been declared.

We do believe -- while we are not commenting on other legislation -- we do not believe that teachers have the right to strike and we cannot support any legislation that would force teachers to strike at a certain time or because of a particular process. I have not, in my years, seen any situation which has been improved by the imposition of a strike.

ALSBO does not support province-wide bargaining as suggested under the MacDonald Commission report. We feel that negotiations should take place at the local level. This respects the differences between Boards and local needs and places the control of the contract in the hands of those who are immediately accountable for it.

The identification of the bargaining unit is one which is of great concern to us. We oppose formation of bargaining units on bases of sex or language to bargain on their own for separate collective agreements. We feel that the unit should consist of all representatives of all branch affiliates within regular day-school panel, in that all elementary units would bargain together and all secondary units would bargain together. Coming from a Board which adopts that model, at the moment we found that it is most conducive to early settlement.

Regarding the current concern with continuing education, night school, summer school teachers, we are concerned about the recent court decision that ruled that

continuing education teachers must bargain under Bill 100. We have tried unsuccessfully for the last four years to have the Education Act amended to exclude these teachers from Section 230 of the Education Act, which defines a teacher.

The majority of these teachers are employed on a seasonal basis. They are paid an hourly wage and they do not have the same responsibilities as regular day school teachers. This also would create a lot more bargaining units to deal with and the costs of collective bargaining are increasing to some Boards beyond control.

ALSBO member Boards are the province's major providers of continuing education courses. The financial implications could jeopardize these courses and the students would be the losers. In a society today which is looking more and more at the education of students from practically the cradle to the grave, we have to have concern about the control of the costs of providing that education.

In conclusion, we want to thank you for listening to us. We want to reiterate what we feel are the main points of our brief -- that time lines should be shortened, that there should be specific dates included in the legislation. Please review the fact finding: eliminate it if possible or make it optional; put it into a better position in the time lines to set a date for mandatory mediation.

Thank you very much.

The Vice-Chairman: Thank you. I will start with Mr. Johnson.

Mr. Johnson: First of all, I would like to congratulate you for your presentation, and the most important point that I think you made is where you address the needs of Ontario students. That, hopefully, is what we should all be working for. And sometimes I think we get caught up in either of the other sides and we forget that the major concern is the students.

In any strike vote, we have management, we have employees and then we have refrigerators or cars or something. In this situation, we have people that are really hurt by strikes, and we should do everything we can to avoid them or to make them as less harmful as possible. I think that both sides would agree to that.

Anyway, I would like to just comment an off-handed remark. You mentioned something about a fermentation period. You implied that you should wind up making --

Ms. Nelson: You are talking to the wrong person, I am afraid. I am a teetotaler.

Mr. Johnson: Third party assistance. Your association believes that either party should have the opportunity to request mediation at any time during the bargaining process?

Ms. Corbishley: Yes, we do.

Mr. Johnson: Would that replace the fact finder?

Ms. Corbishley: It would probably replace the fact finder at the earlier part of the process. If fact finding remains part of the process, we feel that it should take place after impasse has been declared. Now, it is our feeling that a mediator could be called in long before impasse and therefore we have a greater chance of collective agreement.

Mr. Johnson: You feel that both teachers and the Boards would just as soon not have a fact finder?

Ms. Corbishley: Yes.

Mr. Johnson: If that is the feeling of both parties, then why did you strengthen the role of a third party as serving the same purpose or it may be a more meaningful purpose?

Ms. Corbishley: We feel that a mediator would be more meaningful than a fact finder. To quote one of the members of my committee, the feeling is that negotiations start off with an exchange of intent to negotiate before the end of January. Briefs may arrive March, early April, sometimes May, and the parties are not inclined to negotiate seriously because they know that fact finding is there. They will declare impasse; they will ask for a fact finder that will often write a report, fall in love with it and bring it back to the fact finder. In the meantime, nothing has happened; nothing conducive has happened. There is no impetus to sit down at the table and negotiate.

Mr. Johnson: You are saying that either party could request this?

Ms. Corbishley: Yes.

Mr. Johnson: And it would be mandatory?

Ms. Corbishley: It would be mandatory if there were no settlement, in our model, by the 15th of September. We believe it should be mandatory, yes.

Mr. Johnson: Okay. You mentioned that there is little public interest in the fact finder's report. That was not my experience during the strike in Wellington. I found that the people were very interested in what the fact

finder said. I would assume that if there is no strike (inaudible) strike vote certainly, it could be handled by another party that may be beyond the (inaudible). That is all.

The Vice-Chairman: Ms. Bryden?

Ms. Bryden: Thank you, Mr. Chairman. I am very glad that the Association of Large School Boards came before us because I think your experience covers some very large Boards and a very large number of the pupils.

But I notice you do endorse the right to strike for teachers but you do not deal with the question of whether principals and vice-principals should also have that right, which they do not have under the present Act. Did you consider that in preparing your brief or do you have views on whether that situation should be reconsidered in light of the number of people it does exclude from the collective bargaining process, the full collective bargaining process, and you may be denying them certain civil rights that other people have?

Ms. Corbishley: It is not something which we have addressed because we have talked about it at our round table discussions, and it has been our experience that principals and vice-principals have not sorted out for themselves yet whether they are managers of schools or whether they are teachers who are managers of schools. Until they can define for themselves what their role is -- The Education Act makes them the managers of the schools, the organizers of the schools, and this is how we, as management, see them.

If they can sort out for themselves -- There have been a number of court cases in which this question has been asked at different times, and some principals see themselves as teachers and some see themselves as managers. Therefore we have not addressed that because it is a very ticklish situation.

Ms. Bryden: But in the case of the larger school Boards, are they not much less managers perhaps than in the case of smaller school Boards because you do have large trustee Boards and large personnel departments that would take away any power to hire and fire particularly, of course, but also to discipline.

Ms. Corbishley: That does not take away from the principal's job of organizing the school however.

Ms. Bryden: Well, do you not think that schools perhaps should be organized by a team made up of teachers and principals who perhaps would be leaders but not just people who hand out orders as in a factory?

Ms. Nelson: Part of the problem, and I suspect part of the reason, that there is a separate Act covering school Board negotiations, is that it is not useful, in fact, to apply an industrial model too closely because, as was mentioned earlier, your product is not refrigerators or cars, and the interactions, I think are very different.

A principal has a very big role as a curriculum leader in a school. But in the secondary schools the principals also do hire the teachers; they advertise directly and do hire in many cases and even in some elementary schools that is the case. They do have a role in the evaluation of staff although the supervisory officers have a final one.

And so they do have a very anomalous position. As program leaders they are clearly part of the teaching team. As the definitions that come out of various Acts and Board policies, they clearly have a management role, and I think that is why everybody is in such a state of flux about where they fit into the process.

Ms. Bryden: And you do not see a different process for those in larger school boards than in small?

Ms. Nelson: Well, you see, whether a school Board is large or small, schools tend often to be somewhat similar in size, and you have a tremendous variety of schools. Certainly in a school with 3,000 secondary school students you would have a principal who is very much more a manager than you would in a 100-pupil elementary school.

But it must be very difficult to write a piece of legislation that could cover that range of complexity, and I think that is where part of the problem arises.

Ms. Bryden: I notice you do make two very important recommendations. You make quite a number but two that strike me as extremely important. One is that the resources of the Education Relations Commission should be beefed up considerably so that they are not part of the delays that occur when, as, and if a fact finder is appointed. You would like to abolish the fact finders, I gather.

But has your experience been with the fact finders that there is a long delay in finding a person? And how many months does it usually take from the time a fact finder is asked for and the time that they report?

Ms. Corbishley: I will cite a situation that happened in Carlton, which happens to be my Board, wherein the fact finder's report was made public by the ERC while the mediator was meeting with both parties. It was in the spring. It is incongruous for this sort of thing to happen, that the fact finder has come in, has met with the parties has read the briefs, has written his brief and, in the

meantime, the parties have already asked for mediation. They have a mediator and yet the fact finder's report becomes public while they are actually meeting in closed session.

There is no criticism of the fact finder, but it is obviously a waste of manpower at that point to have called in this individual and to have taken his time to write this brief. In the meantime the parties are already with another third party.

Ms. Bryden: Well, your recommendation that mediation should be mandatory and either party can ask for it at any time I think is probably a substitute for the fact finder process, and perhaps your experience has been that it would be a much better process than the fact finding process.

Just one other question. Since continuing education is very much coming to the forefront now, is there not an argument for making all continuing education people also subject to the Act for bargaining purposes? At the moment they are treated rather like second class citizens in that they have a contract but they are not considered part of the bargaining unit. And while you do mention they do not have as much responsibility for running the school, they should have equal responsibility for running a continuing education program if that is going to be expanded and become an important part of our educational system.

And governments are now starting to consider that part-time employees should be treated on a pro rata basis with other employees for benefits and for collective bargaining. But at the moment they are not recognized under Bill 100.

Ms. Corbishley: There is a difference between continuing education teachers and part-time employees. We have both. And some of our continuing education teachers are also part-time employees and are part of the bargaining unit under OSSTF.

You cannot, at least in most of the larger school Boards and those are the only ones for which I can speak at this point. You will find that you have a lot of the people who are performing the same functions, that they will be teaching day school during the day and they will be teaching continuing education at night. We also have teachers who teach on point six seven, point two three, point three three during the daytime. Those are part-time people and they are eligible for benefits as well.

So there must not be confusion between our continuing education night school adult day school teachers and our teachers who are part of the OSSTF or TFC in Carlton. They have no difficulty with them organizing. It is just that

they should not be part of the same bargaining units as our secondary school teachers. Not only do they not have the same responsibilities, but continuing education is not recognized by the government as performing the same function as day school, regular day school.

Ms. Bryden: Although it is subject to government grants.

Ms. Corbishley: It is subject to grants that are about half the size of day school grants. There are a lot of things that are going to have to take place before we can say, "You will be in the bargaining unit and be recognized as a full-time teacher just the same way as your compatriot who goes into the classroom at 9 o'clock and leaves at 4, because there are other organizations at work. Continuing education is not recognized by the government the same as regular day school.

Ms. Bryden: I guess this is something we have to look at in more depth.

Ms. Corbishley: That is right.

Ms. Bryden: Thank you, Mr. Chairman.

The Vice-Chairman: Thank you very much. Are there any other questions from members of the committee? If not, thank you very much for coming; we appreciate your brief. It certainly will be very helpful to us.

Ms. Corbishley: Thank you, Mr. Chairman.

The Vice-Chairman: Our third presentation is from the Muskoka Board of Education. We have Mr. Cliff Whitfield, Director of Education and Mr. Murray Green, Chairman of the Board, and if you have --

Clerk of the Committee: I am sorry. There are two more.

The Vice-Chairman: Mr. Whitfield, if you would like to introduce yourself and the people who are with you.

Mr. Green: Mr. Chairman, Chairman of the Negotiating Sub-committee, Marilyn Rowe. Chairman of the Board, Mr. Murray Green; and Coordinated Bargainer, Mr. Michael McCleery.

The Vice-Chairman: Welcome. And for the benefit of the members, it is Brief no. 8. When you are prepared to start, go right ahead.

Mr. Green: Thank you, Mr. Chairman. At the time of the 1980 Matthews Commission hearings to review the

collective negotiations process between teachers and school boards, the Muskoka Board of Education submitted a detailed brief to the Ontario Public School Trustees' Association related to those hearings.

In that brief it was stated that:

"The Muskoka Board of Education appreciates the inherent value in the provincial guidelines of the Act as a means by which local parties to a collective agreement can be accommodated in a fair and equitable manner."

Our basic position has not changed. We continue to believe in the value of the collective bargaining process. However, after seven more years of protracted bargaining sessions with both our elementary and secondary teachers, after a secondary teachers' strike in 1985 and after a recently concluded secondary bargaining session in which the use of sanctions was approved but not used, we believe even more strongly in the urgent need to revise the process.

The Muskoka Board of Education is in a unique position to comment on this issue for two reasons. We have experienced both successful and unsuccessful negotiations with our teachers.

In recent years even the successful negotiations have been lengthy and demanding on teachers, trustees and administrators. The net result has been a general lowering of morale within our system and a significant deterioration in relationships between teachers and trustees, administrators, students and parents. Our community is angered by what they perceive is a long and protracted process which places the education of their children in jeopardy.

We are also in a position to comment because of our small size and our limited resources. Despite the fact that we have been successful in reaching two-year agreements with both elementary and secondary teachers in recent years, the fact is that we have spent 25 of the last 36 months in negotiations with our secondary teachers and 17 of the last 36 months in negotiations with our elementary teachers.

The drain on the time and energy of trustees, administrators and teachers has been significant. There is a tendency for negotiations to become the major focus in a small system, and as a result the more important issues such as program development, teacher supervision, evaluation and professional development take a back seat.

That has been the experience in Muskoka, and we believe our experience is typical of the problems encountered by many of the small and medium-sized boards of

education across the province. The bottom line is that the negotiation process, which should be a positive force leading to better employee relationships and improved quality of education has the opposite effect.

What are the weakness in the present collective bargaining process which contribute to that situation? There are three in our opinion.

The present system encourages a long and protracted negotiating process. Although notice of intent to bargain is required by January 31st with a token meeting required within 30 days, it is often several weeks or even months before an initial brief is presented. There is a tendency for negotiations to move very slowly in the initial stages as both parties wait for provincial trends to develop and be identified. The lack of any deadlines almost ensures that any serious negotiations will not take place until after the contract in effect has expired and classes have resumed again in September.

A second weakness is the mandatory intrusion of a third party, specifically a fact finder, at a particular point in the process. That leads to a variety of delaying tactics and an unwillingness to make compromises on original positions. We agree with the views of Myron Leiberman in this regard:

"As long as the alternative to settlement is an impasse procedure, teacher persistence and unreasonable demands is only to be expected. In fact, the very existence of impasse procedures often strengthens teacher determination to concede as little as possible less they weaken their position in the impasse procedure."

Probably the most damaging aspect of the impact procedures has occurred in the area of fact finding. The imposition of a fact finder can be a badly timed intrusion into the discussions. In the words of Bruce Stewart:

"This mandatory intrusion has caused a flood of fact finding in the fall of each year. The number of persons competent and willing to do fact finding is, of course, limited. The Commission, (E.R.C.), therefore has been required by the pressure of events to appoint persons as fact finders who may not have experience in labour relations nor the background in educational matters which one would wish."

The third area of weakness in existing legislation is that the balance of power rests with the teacher negotiating team. As a general rule in labour legislation, both parties are free to initiate action at the same time. Employees may decide to strike, and employers can at the

same time change the terms and conditions of the contract or lock out the employees. This, however, is not true under the terms of the existing legislation governing teacher - school board negotiations.

We believe it is an area of concern that must be addressed. To provide only one party to a dispute with a right to act while the other can only react at some later date is simply not sound practice.

I will now ask Marilyn Rowe to continue.

Ms. Rowe: Thank you, Murray. What specific recommendations do we propose as solutions to these problems?

Recommendation No. 1 for your consideration: The third party intrusion in the negotiation process be significantly reduced by (a) the elimination of the fact finding process, (b) the appointment of mediators only at the joint request of the parties or at the discretion of the Education Relations Commission but not later than 48 hours following the rejection of the last offer of both parties.

We believe the adoption of recommendation no. 1 will force both parties to actively seek compromises and bargain in good faith without relying on the intervention of a third party.

Recommendation no. 2: That the length of the bargaining session be reduced by the establishment of the following time lines:

- (a) notice of intent to bargain must be delivered by January 15th;
- (b) a brief presenting the total request of the branch affiliate must be submitted by February 15th;

And between (b) and (c) negotiations hopefully will be taking place.

- (c) the Board's last offer must be delivered by September the 10th;
- (d) a vote to accept or reject the last offer must be held by September 15th;
- (e) the teachers' last offer must be delivered by September the 20th;
- (f) the Board must accept or reject the teachers' last offer by December 25th; and
- (g) as of October 1st, the teachers may begin a full withdrawal of services, the Board may lock out the teachers or the Board may alter the terms and conditions of the contract.

The imposition of the above time lines will have the

impact of sharply reducing the length of the bargaining process and will also ensure that any work stoppages will occur at a time which will allow students the best possible chance to recover from the impacts of the strike.

Recommendation No. 3: That a mechanism for resolving impasse be introduced on the 30th day of a strike or lock-out. Following three days of intense mediation, and with no resolution to the dispute, the teachers would return to work and each side would submit a final offer to a third party final offer selection board with one member appointed by each party and a chairman mutually agreed upon or appointed by the Education Relations Commission.

In addition, the mediator will submit a proposal for settlement and the final offer selection will be made from one of the three total packages. This mechanism could also be used as an alternative to a strike or lock-out upon the request of both parties.

The effect of this would be two-fold. It would encourage the parties to make realistic final offers and it would provide a strike or lock-out ending solution.

We would like to present for your consideration a model for collective bargaining between teachers and school boards, and we propose that on January 15th, notice of intent to bargain be delivered by either party.

February 15th, the branch affiliate presents its initial brief.

April 30th, a mediator may be appointed at the joint request of two parties or on the decision of the Education Relations Commission that an impasse has been reached.

September 10th, the Board delivers its last offer for settlement. September 15th, the teachers accept or reject that last offer. On September 20th, the teachers deliver their offer for settlement. And on September 25th, the Board accepts or rejects that last offer. October 1st, strike or lock-out may begin. Boards may amend terms and conditions of contract. Impasse-resolving mechanisms may be implemented upon the request of both parties. Thirty days after a strike or a lock-out, three days of intense mediation begins. Three days later, the teachers return to work, both parties and the mediator submit a proposal for settlement to a final offer selection board.

In conclusion we believe the above revisions would shorten the negotiation period, reduce the negative impact of third party intervention and encourage the parties to reach a collective agreement and provide a sanction ending mechanism. Thank you?

The Vice-Chairman: Are there any other comments from the panel? No. Thank you very much. The committee certainly appreciated it. We have one person who wants to ask a question. Mr. Lupusella?

Mr. Lupusella: Thank you, Mr. Chairman. I think that I raised the principle of my question yesterday and I would like to get the position of the panel in relation to the following question.

Let us go back a little bit to the role of the Education Relations Commission, which has the duty of the administration of Bill 100. And one of the duties is to advise the Lieutenant Governor in Council that in the opinion of the Commission, continuation of the strike, lock-out or closing of the schools will jeopardize the students' chances of successfully completing their courses of study.

And I would like to give a definition of what jeopardy is in relation to the school year of the student. Jeopardy is the point in a strike where if the strike continues, a student will not have enough time left in a school year or semester to complete the work required to be granted a credit for each subject for which the student is enrolled.

Now, under Bill 100 we know for a fact that the principle of the right to strike is there, but I do not see under the same Bill the protection of the student to continue the school year in case the strike is prolonged.

Now, in case this principle will be embodied in Bill 100, how can you reconcile the principle of protection of the students' right to education and to the principle of the right to strike?

Ms. Rowe: If I could comment on that. To decide when any particular student or group of students' education is put in jeopardy as a result of a strike is nearly impossible between semestered schools and non-semestered schools and with the individual student themselves. That is why in our model, we are proposing that on the 30th day of a strike it is over and we have suggested a mechanism for a resolution to that because you are correct; there is no time that you can say this is the magic moment that all these students' education is in jeopardy. So we attempt to address it by the 30-day limit to the strike.

Mr. Lupusella: I follow the intention in your presentation and I agree with some of the principles that you enunciated in the course of your presentation which will facilitate the process of reaching an agreement as soon as possible. But sometimes this agreement is not reached because the other party, the teachers maybe, know how to play the game very well and there is, of course, this delay

of not bargaining in good faith. But in the course of this particular action, what we are forgetting is the rights of the students to education. Do you not think that this principle should be incorporated in Bill 100?

Ms. Rowe: I think you have pointed out very, very clearly why this Bill has to be amended for all the reasons you have given.

Mr. Lupusella: Thank you very much.

Mr. Green: There is one other point to that I would like to make. It is not a just the time period that the strike occurs that disrupts the students' education. Because the bargaining goes on so long, because everything is up in the air, the students, the discussion and the disruption to their education begins long before a strike ever starts. And I do not think they really recover that and especially at the end of a lengthy strike when there is no time added on for their education. They have to just take the highlights, if you want to call it that, and I do not think they ever recover. That is why something has to be done.

Mr. Lupusella: Thank you very much.

The Vice-Chairman: Mr. Johnson?

Mr. Johnson: In recommendation no. 1, third party intrusion in the negotiating process, I thought it would have been of assistance rather than an intrusion.

Ms. Rowe: The word "intrusion" was used specifically. We feel that fact finding at that particular time is an intrusion on the process. It completely stops any productive negotiations as both sides prepare their brief for the fact finder, as the fact finders goes away and writes his report.

Mr. Johnson: What about a mediator instead of a fact finder at that point?

Ms. Rowe: As we have suggested there is a time line for a mediator, and that would be on April 30th that a mediator may be appointed, and that would be prior to fact finding time now, which is usually September 1.

Mr. Johnson: The previous Large School Boards of Ontario's presentation suggests that a third party assistant mediator be brought in at any time during the bargaining process requested by either party. Would you be opposed to that?

Ms. Rowe: The date April 30th was set specifically so that there would be sufficient time for the two parties to

sit down and negotiate face to face. In our history in Muskoka we have found that our most productive negotiations take place when the teachers are sitting across the table from the trustees negotiating without third party intervention.

Mr. Johnson: But you say that a mediator may be appointed at the joint request of two parties; what if one party does not agree?

Ms. Rowe: I do not believe it would be as it is now, up to the Education Relations Commission to make that decision on whether they could rule that there is an impasse in negotiations.

Mr. Johnson: On April the 30th?

Ms. Rowe: Yes.

Mr. Johnson: So you are suggesting that it be mandatory on April 30th that a mediator be appointed?

Ms. Rowe: No; "may be" appointed. The sides may request mutually that a mediator be appointed on April 30th. If the Education Relations Commission, as they follow the negotiation process with school boards, feel that both sides have reached an impasse and nothing productive is going to happen, then they can send a mediator.

Mr. Johnson: You feel they can determine that by that earlier date?

Ms. Rowe: Yes. You know when you are at an impasse.

Mr. Johnson: Thank you.

Mr. Green: It is interesting to note that in Muskoka we went to zero hour in this last round of negotiations, and after, not the failure, but the mediator could not bring the parties together. The resolution was reached when both parties, strictly the local people with no outside people at all, got together and resolved the issue on a face-to-face basis.

The Vice-Chairman: Mr. Davies?

Mr. Davies: Thank you, Mr. Chairman. First of all, Mr. Chairman, I cannot let the opportunity pass without commenting on my colleague, Mr. Lupusella, who is now a Liberal, that at least in the Liberal ranks they have someone who is concerned about the students. I would remind him that it was his new party that carried on in a latter strike and the youngsters suffered for 52 days and the vote -- 51 days-- and a vote came to bat and it was my colleagues behind me who voted against it. So, Mr.

Lupusella you...

Mr. Lane: Was that a question?

Mr. Davis: Well, Mr. Chairman, I could not miss the opportunity.

The present process that you indicate here really negates the whole process of collective bargaining because what, in effect, you are saying, if I understand this correctly, is that as of October the 1st, the teachers can begin to strike, and on the 30th of October they can be ordered back to work and it is a final arbitration offer selection.

So really what you are saying is that a school board across the province would only see a strike of up to 30 days and then it would be scrapped.

Ms. Rowe: Yes.

Mr. Davis: I have some problems with that. I do believe that the collective bargaining process allows the determination of a strike to be established when negotiations break down -- not on a time frame basis, October the 1st.

I want to come back to the process. You have indicated that on January the 15th, notice of intent is to be given, and we all understand the time frames are one thing we should be addressing. But on February the 15th, the branch affiliates present their -- I would assume it is a written brief with items that they want to discuss. And do I also assume that the Board will also present their written brief and the items they want to discuss at the same time?

Mr. Whitfield: Ordinarily -- if I may, Mr. Chairman -- ordinarily that opportunity exists. I think rarely is it ever exercised. The expectation is that the Board would be pleased to continue with the agreement that is there and they are interested in looking at receiving and the views of the teachers with respect to other changes or improvements.

Mr. Davis: Then would you be different from the Matthews Report in one of its recommendations which suggests that both parties -- and it is 15 days after the intent to negotiate is indicated -- that both parties provide to each other a written statement of the areas that they wish to negotiate?

Mr. Whitfield: That provision is there and we do not suggest that it be changed.

Mr. Davis: Thank you.

Mr. Green: Can I comment on something Mr. Davis said. You talked about the process; you had a problem with it. I think it was said earlier here that we are not dealing with refrigerators. We are dealing with children and their education. And I do not think we should confuse refrigerator bargaining with education.

And if what we are suggesting is drastic then maybe that is what we have to do to get something back in line. We are jeopardizing children's lives and years of education by allowing refrigerator bargaining to interfere with the educational process and perhaps we have got to do something that is different in order to get that back in line.

Mr. Davis: One of the questions I have asked all the delegates and I am getting tired of asking because the answer I get is nobody can decide when jeopardy occurs. I believe that that is a falsehood. I believe you can come to a conclusion when jeopardy occurs.

I do not blame the teaching federation nor do I blame the boards of education. I believe the Act is not definitive enough to direct the ERC when that kind of jeopardy occurs. And it occurs for different students at different times; I am well aware of that. But one has to have some compassion for the student who is already experiencing difficulty in doing their daily work and now they face a strike of however length it is.

And I believe that sometimes this becomes a political football game, and it seems to me that what is required -- and I do not think we need it in legislation -- is the opportunity to sit down with teachers and trustees and educators and try to come up with some kind of specifics which say when these kinds of conditions are met, the chances are the students and the system are at risk. And at that point the ERC should begin to make some determination.

I have grave difficulty in understanding how the ERC can decide on a Wednesday that there is not jeopardy and on a Thursday morning, in consultation with the Minister, all of a sudden decide there is jeopardy. So at 2 o'clock in the afternoon they can announce the end of a strike.

And yet I do not want to remove the right of teachers to strike. I think that is inherited in the whole process of Bill 100. And Bill 100 was an important piece of legislation because prior to Bill 100 teachers and boards were reaching impasses and there were the dislocations anyhow. At least this is a process that puts it into some type of framework that we can operate. And Bill 100 is here because my party wanted it to be reviewed and the other party supported it so I think that is important that we look

at it.

Ms. Rowe: If I could just comment, Mr. Davis. As we said in the opening of our brief, we agree that Bill 100 should exist and that the history of negotiations since Bill 100 have been better than they were prior to it. But when you talk about jeopardy, not only is the education of the student in jeopardy, but what a strike does to a small community like the three we have in Muskoka is devastating.

You have students being thrown out of their house because they do not know what to do with themselves. They are not getting along with the parents. The tension is building up. You have the emergency department of hospitals receiving kids for various things because they have a lot of time on their hands. You literally rip a community apart. And one of the sad things that happened to us was we lost a lot of our grade 12 and 13 students to other jurisdictions because they wanted an education. And a community deprived of that age of kids is a very sad community.

Mr. Davis: How many left your system and went elsewhere?

Ms. Rowe: Mr. Whitfield?

Mr. Whitfield: I think at one time we had approximately 200 youngsters attending schools outside our jurisdiction during the strike. Many of them did -- and I do not have the statistics with me -- but many of those youngsters did not return at the conclusion of the strike and we have not seen them since, of course.

The Vice-Chairman: Mr. Johnson?

Mr. Johnson: I wonder, to follow up on that, would it be possible for you to provide us with that information? I experienced a strike in my riding in Wellington just a few short months ago. That went 11 weeks -- 51 days -- and at that time, there were many people requesting a follow-up study be conducted to determine if there was detrimental effects to the students.

The Minister deemed in his wisdom not to do so, but I wonder if maybe that is a proposal that this committee could consider. And I think we should at least discuss the pros and cons of a study. Certainly I do not think anyone should shy away from what are the results of a strike. If we know that then we can better determine what changes we should make. So if you people could provide us with whatever data you do have on the results of your strike, it would be of some benefit.

Mr. Green: One other point I think should be made. I think one of the main tools that comes from Bill 100 is the

pressure that is put on the parties when negotiations break down, and that pressure, I think, adds to the difficulty the student has. So long before the strike starts that pressure that is to build up and be applied to the negotiating teams works on the student and it affects his school works and it affects his learning.

So I think jeopardy occurs before the strike starts and so it is a much longer period than I think what people realize.

Ms. Rowe: If I could just comment; we would be glad to provide those figures for you and I am pleased that you are interested in this area. I know we tried to have a study done after the Grey strike and was refused on that also. So we will certainly send you what we have.

The Vice-Chairman: If you want to send that to the committee, we would appreciate it. Mr. Allen?

Mr. Allen: That very much, Mr. Chairman. I welcome the members of the Muskoka Board. I am glad to see you here with us.

May I say that I think it is commonly accepted -- I am not just too sure, therefore, what value it is for us to have particularly extensive studies on particular ways in which jeopardy exists in a situation like the ones that we are talking about and describing. There is no question that it precedes the time of actual strike decision and action; I do not think there is any question about that.

I think what we all have to bear in mind is that if one does accept the collective negotiation process and one does accept the right to strike, one does then get into those situations where you do occasionally reach impasse.

I was glad to hear to remark that the circumstances have been better since there has been an orderly procedure under Bill 100 than previously so that any suggestion that somehow or other we are dealing with the rights of students as against rights of teachers in some abstract way -- I am looking at a world where somehow everything might be harmonious and a conflict would never exist and there would never be jeopardy and that it is just not a real world to deal with.

So that my sense of what we are about is to try to find some fine tuning that helps process, but with the recognition that we may well, however finely we tune it, we may still find ourselves with the years where there are 2 or 3 per cent of the settlements. That just will not happen so neatly and we will end up with the impasse.

I guess what concerns me with some of the attempts to

bind in a little bit too tightly some of the deadlining and so forth is that you may just simply add to the pressure cooker at some points along the way and not be particularly helpful.

And I wonder in that regard, for example, whether you would not have some concern that in designating a 30-day legitimate strike, whether you would not, in fact, really be inviting most strikes to simply be 30-day strikes and that we would find that 15- and 20-day strikes become 30-day strikes. You might avoid the occasional strike which perhaps happens every half dozen years where it goes on beyond 30 days. Is that a concern that you would have in setting -- It is of mine, but I just wonder if is yours, too.

Mr. Green: I think you would find that they would be opting for third party arbitration. I mean, you are probably right. If you are going to reach that point anyways at the end of a 30-day strike, why have a 30-day strike so why not just opt on day one and go for that if that is what it takes.

But I want to repeat we are not dealing with refrigerators. We are dealing with students and somehow you have to address that. I know we have to have rights of people. They have to have their right to bargain, they have to have the right to strike, but somehow we have got to deal with the kids. And again, I repeat, it is not refrigerators we are dealing with.

Mr. Allen: Well, Mr. Chairman, could I ask you. Do you really think that anybody out there in any of the parties to negotiation thinks that they are dealing with refrigerators?

Mr. Green: Do you want an honest answer? Sometimes, after bargaining for 14 months, you start to think that way.

Mr. Allen: Unless the teachers on their part think that perhaps you are dealing with refrigerators. So I am not sure that language is helpful, you see. That is all I am concerned about and that is why I think we need to deal with reality and make those concessions.

People are not thinking in terms of refrigerators. Across the board, 1975 through 1985 you have got anywhere from 173 to 210 different negotiations, and every one of the years registers well above 90 per cent settlement. Ninety-four is about the lowest one that one can see in the range. People are obviously taking it seriously surely, they are not casually or willfully going out on strike and they are not assuming, from either side, that we are dealing with refrigerators.

But are we not indeed in one of those human social situations where you just cannot always avoid the ultimate consequences of a conflict situation?

Mr. Green: I do not agree. I think there has to be a better way.

Mr. Allen: Well, that is what we are here for. But I just think that in using language of refrigerators from either side does not help us at all.

Mr. Whitfield: Can I elaborate, Mr. Chairman, on that point? We successfully negotiated contracts this year with both the elementary and secondary panel. However, as far back as the fall of 1986 there was an apprehension in our school system and certainly in our municipalities -- and Marilyn has already alluded to that -- that we are headed down the same road.

The fact finder had been called in. Initially a fact finder had been requested unilaterally by one side but the other side did not support it, but eventually we got a fact finder. And at that particular point people knew we had an impasse, and from that day, almost the first day of school in September of 1986, until March, 30 March of 1987, our system was experiencing great anxiety.

The youngsters, the teachers, the parents, the trustees, the administration -- everyone. As far back as the fall we were getting calls from the parents or we would be stopped by students, "Is there going to be a strike? Should I make arrangements to have my youngster educated somewhere else this year?"

And of course the pace of that accelerated by the time we got into the new year, and we had the request for the supervised vote on the strike vote, and then of course the date was announced. This is not a healthy situation. Even though we have a contract for two years this year, our system was really uptight; it was in turmoil for five or six months.

That is not conducive, I think, to what Mr. Lupusella said in terms of the education of youngsters. No strike, but great tension and a detrimental effect, I believe, on the education of youngsters. We believe the suggestions we are putting forward -- there is no magic there; we do not believe we have a panacea -- but we are suggesting that somehow or other we must look for a better balance, a better compromise, so that the strengths of Bill 100 can be maintained and yet the weaknesses can be addressed in a productive fashion.

Mr. Allen: I would suspect -- and I think that everything is a learning situation -- but what I think does

not happen around those circumstances in Boards is that no one really uses it as a learning situation for anybody to learn, for example, that those tensions are part of life. And you are going to encounter them not only in the school but you are going to encounter them after you leave school.

In other collective bargaining situations, there is a lot of nervousness about any strike situation that might eventually, in any situation, whether you are talking about a refrigerator factory or not. I feel that we do not use events like those as legitimate learning processes for people about the way life is.

Could I ask you, some other presenters have suggested to us that one of the major problems of the fact finder, third party intrusion, is something that the ERC does not have to bring them onstream fast enough or to secure people of sufficient quality through the compensation they provide. Is that something that you think could be helpful? Would further resources speed up any of the processes around the third party dimensions of negotiations?

Mr. Green: I think what we are saying is that it is just the timing, that the parties are just simply getting started into the process. And what happens is that the bargaining literally shuts down as the. It is a bit of posturing I guess as each parties then gets his position ready for the fact finder and face-to-face bargaining just ends and there is quite a delay in that process.

The Vice-Chairman: Thank you. Mr. Pollock?

Mr. Pollock: My comments are more or less along the same lines as Mr. Davis and Mr. Allen. On page 7 it mentions 30 days after a strike or a lock-out and then three days after that, the teacher is to go back to work. My question is, why 30 days? Why not 3 weeks -- something along that line?

Because I believe you have already mentioned that maybe a week or two weeks even before they go on strike there is upheaval, there is friction, and the education system is not flowing along. So why 30 days? Any particular reason for 30 days?

Mr. McCleery: Thank you. Bill 100 recognizes that the teachers have the right to strike and Boards have the right to lock out. In the development of the so-called "Muskoka model" that we presented for you, we felt 30 days was sufficiently long for economic pressure to be brought both on the Board and on the teachers.

It is also, I suppose, about half way into the longest strike in the history of the province -- the 55-day episode in Sudbury and the 51-day situation in Wellington county --

and we felt after 30 days, enough was enough.

If the parties had not been able to resolve their differences at that time, they would go to this innovative dispute resolution model where a mediator is appointed. There is three days of intensive mediation, and if they cannot resolve their differences within three days, they go to final offer selection.

And the essence of final offer selection is that the results are so Draconian that the parties are encouraged to make those final adjustments in free collective bargaining in the three days of mediation. That is why we selected that time frame.

Mr. Pollock: But you would not be opposed to three weeks or something along that line?

Mr. McCleery: I think if we were to have an artificially short period, the temptation, as Mr. Lieberman suggests earlier in our brief, that if you know that any strike is only going to last five days or ten days, I think they would be much more common than they are now.

The Vice-Chairman: Thank you very much. There are no more questions from the committee. I would like to thank the group from Muskoka for coming. Mr. Whitfield, I certainly appreciate your frank remarks and I would like to thank you once again.

Committee, if you will just give me a minute here. We have a notice that is probably interesting to some of the members or maybe all of the members of the committee.

There is a meeting at 1:15 in room 113. It is in regards to Riley-Meggs Industries who make the magnet hockey goal system. So if it is interesting to some members you are asked to attend at 1:15 and it is room 133 of the Legislative building. That is the Progressive Conservative caucus room, if that helps.

Mr. Lupusella: Mr. Chairman, just to clarify this, it is under the jurisdiction of this committee that we have to look up this item which you just demonstrated or just members of the Conservative party?

The Vice-Chairman: No, no; it is all members. Not just members of the Conservative party -- all members. It is the only room they could get, I guess, and that is why they are there.

Mr. Lupusella: Okay.

The Vice-Chairman: No, it is open to all members of all parties and all committees, I guess.

We will be adjourning now until tomorrow, Wednesday
March 25th at 10 a.m.

The Committee adjourned at 12:32 p.m.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

SCHOOL BOARDS AND TEACHERS COLLECTIVE NEGOTIATIONS ACT

WEDNESDAY, MARCH 25, 1987



STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: McCague, G. R. (Dufferin-Simcoe PC)

VICE-CHAIRMAN: Guindon, L. B. (Cornwall PC)

Allen, R. (Hamilton West NDP)

Bryden, M. H. (Beaches-Woodbine NDP)

Fontaine, R. (Cochrane North L)

Lane, J. G. (Algoma-Manitoulin PC)

Lupusella, A. (Dovercourt L)

McKessock, R. (Grey L)

Offer, S. (Mississauga North L)

Pollock, J. (Hastings-Peterborough PC)

Sheppard, H. N. (Northumberland PC)

Substitutions:

Callahan, R. V. (Brampton L) for Mr. Fontaine

Davis, W. C. (Scarborough Centre PC) for Mr. Sheppard

Johnson, J. M. (Wellington-Dufferin-Peel PC) for Mr. McCague

Reycraft, D. R. (Middlesex L) for Mr. McKessock

Clerk: Deller, D.

Staff:

Nigro, A., Research Officer, Legislative Research Service

Witnesses:

From the Prince Edward County Board of Education:

Westwell, A., Labour Relations Consultant

From the York Region Board of Education:

Bowes, H., Trustee

Individual Presentation:

Atkins, A.

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday, March 25, 1987

CONSIDERATION OF REVIEW OF THE SCHOOL BOARDS
AND TEACHERS COLLECTIVE NEGOTIATIONS ACT
(Continued)

The Committee met at 10:05 a.m.

Mr. Chairman: Good morning, ladies and gentlemen, welcome to General Government Committee. We will be starting off immediately with the Prince Edward County Board of Education.

Mr. Alan Westwell, Director of Labour Relations, please come forward and welcome to the Committee.

Mr. Westwell: Thank you, Mr. Chairman.

Mr. Chairman: When you are ready please go right ahead.

Mr. Westwell: The Prince Edward County Board of Education is pleased to have this opportunity to present its concerns about the operation of the School Boards and Teachers Collective Negotiations Act. The Board is concerned about:

Number one, the effect that mandatory fact finding at September 1, has on the collective bargaining process; two, the amount of time lost within the collective bargaining process; and three, the lack of fairness in the existing striking/lock-out provisions.

It is the observation of the Board that mandatory fact finding at September 1 has a major negative impact on the bargaining process. Both parties to negotiations are highly conscious of the fact that if there is fact finding the report of the fact finder may be released to the public. As a consequence there is a strong tendency for the parties to negotiations to structure bargaining positions to show themselves in the most favourable light to the public rather than for the purposes of making a collective agreement.

Effective collective bargaining calls for a willingness to make compromise while trying to address the problems raised. The best negotiated settlements frequently represent extensive compromise from initial proposals. It is extremely difficult to obtain the flexibility for such compromise when one or both parties are concerned about how their position will be viewed by a public which is relatively naive about the collective bargaining process.

During negotiations, the closer it is to September 1st and fact finding, the more the positions of the parties become inflexible. The Board suggests that this inflexibility is either a conscious or unconscious reaction to the knowledge that there will be a fact finder whose report, setting out the issues, will be made public.

Prince Edward County Board of Education recommends that the following be done:

- A. Fact finding as it now exists be eliminated.
- B. Upon the request of either party a "Conciliation Officer" be appointed to confer with the parties and endeavour to effect a collective agreement.
- C. If the conciliation officer is unable to effect a collective agreement, the Education Relations Commission shall either: inform the parties that it considers it advisable to appoint a conciliation board. Or two, inform the parties that it does not consider it advisable to appoint a conciliation board.
- D. No strike or lock-out should occur until after the Education Relations Commission decides to not appoint a conciliation board or until after the conciliation board appointed has issued its report.

The process recommended is based on the conciliation process set out in the Labour Relations Act and it is envisaged that a conciliation board would consist of an employer nominee, a union nominee, and a third party Chair. The Board would hope that the Education Relations Commission would follow the precedents of the Labour Relations Act with conciliation boards being the exception rather than the rule.

The Act currently requires the notice to bargain be given during the month of January and that the parties shall meet within 30 days from giving of notice. It is the experience of the Prince Edward County Board of Education, and other Boards, that much time is lost during the bargaining process.

Frequently notice to bargain is not given until late January. Often the initial meeting following receipt of notice to bargain occurs at the end of the allowable time. Commonly the initial meeting deals only with procedural matters -- ground rules, schedule of meetings, composition of bargaining teams, information. Rarely is the party giving notice to bargain prepared to proceed at this initial meeting and proposals are not received until late March, frequently just before or just after the March break. This means that January, February and much of March has past

before negotiations truly begin.

Prince Edward County Board of Education recommends the following be done:

A. Notice to bargain be given during the first seven days of January.

B. The party giving notice to bargain shall include full and complete proposals for the negotiations to follow. All matters to be opened by that party to be included in sufficient detail to allow the other party to respond.

C. The party receiving the notice to bargain shall respond with full and complete proposals for the negotiations to follow. This response shall be given within 21 days or receipt of the notice to bargain. Active negotiations shall then commence within 14 days of the receipt of the responding party's proposals.

The above would see active negotiations under way by February, two months earlier than now typically happens.

The Act currently restricts the rights of a Board to lock-out, so that no lock-out may occur until a lawful strike is commenced. This means that the teacher unions have complete control over the entire sanctions process and the employing Board of Education is left in a situation where it can only react to the actions of the union. Principles of common fairness compel that the employer should be able to lock-out at any point in time where the union can legally strike without having to wait for a strike to commence. The Employer and the union should be given a "level playing field". The current situation leaves the union with an unfair advantage.

The Board would like to thank the members of the Committee for being given the opportunity to put forward their thoughts in these matters. That is our presentation, Mr. Chairman.

Mr. Chairman: Thank you very much.

We have some questions if you are ready to proceed. We will ask Mr. Lane?

Mr. Lane: Thank you, Mr. Chairman.

A number of the groups coming before the Committee have indicated some difficulty with the fact finding. You are saying fact finding, as it now exists, should be eliminated. I think really you are saying it should be eliminated?

Mr. Westwell: Yes, except in those rare cases as now

exists under the Labour Relations Act where that independent tribunal decides that there are compelling public reasons to have a further process.

Mr. Lane: So, you think it is detrimental to the process as it presently is then?

Mr. Westwell: Yes, sir. I think it is very difficult to carry on negotiations in public.

Mr. Lane: That is a fair find. I like your time frame here. You are really serious about that, that it is a possibility that it will be under way by February which is, as you say, two months earlier?

Mr. Westwell: Yes, as I see it, there is no structural reason why the teacher union should not be able to do so. The Board itself, for example, typically in bargaining receives the teachers' proposals and two weeks later responds.

So, I know that from the Board's side that time frame is very viable. It seems to us that from the teachers' side they would have to begin their process several months earlier to have their proposals ready within their own political framework.

Mr. Lane: The other question I was concerned about is, you say the current situation leaves a union with an unfair advantage. Do you want to broaden that a bit?

Mr. Westwell: Well, as the Act now stands the teacher union decides when a strike will occur; the form the strike will take, whether it to be a partial withdrawal of services, a full withdrawal of services, a work-to-rule. Historically, work-to-rules have been included in the past, but not in recent times. Such manoeuvres as withholding grades. All of this is determined by the union's timetable. The employer has no steps he can take within those regards until the union actually goes on strike.

Now, it is difficult to contemplated a Board actually using the right to lock-out first, but sometimes the existence of a power that is not used is greater than the actual - once you implement it, and actually use it - the force of threat, if you will, disappears.

Mr. Lane: Okay, thank you very much.

Thank you, Mr. Chairman.

Mr. Chairman: Ms. Bryden?

Ms. Bryden: Thank you, Mr. Chairman.

I appreciate you bringing your experience with this Act before us. Have you in any of your negotiations in the last five years got to the strike situation or close to it?

Mr. Westwell: Yes, I have had one strike a year ago this spring in Lennox-Addington.

Ms. Bryden: Yes.

Mr. Westwell: That was, I believe, seven days including the March break, it was a fairly short strike. Going back further, I was also involved, after the strike began, with the Renfrew County Secondary Teachers' strike.

Ms. Bryden: In either of those cases do you think that changes in the Act might have prevented it?

Mr. Westwell: I am not certain that changing the Act would have prevented the strike. For example, my experience in Renfrew, the fact finder's report was written more than a year before the strike and the issues had changed significantly from what the fact finder had reported. It is true you can find all of the issues in the fact finder's report, but the issues had narrowed, had crystallized.

The same thing in Lennox-Addington. Lennox-Addington was a strange strike because it was over just cause. The fact finder's report dealt with many, many issues. One of which was just cause, but at the time of the fact finder's report it was buried with whose other issues.

Ms. Bryden: The fact that the fact finder's report was made public -- it was then made public a year before the actual basic negotiations were going on; is that right?

Mr. Westwell: Yes, and that often happens.

Ms. Bryden: You say that sometimes because the public is somewhat uneducated in the issues of collective bargaining between teachers and boards, that the fact finder's report - even though it is supposed to be bring out the facts - is more of a hazard than to sitting down and making compromises and that sort of the thing.

Do you not feel that it is important that the public should know what the facts are rather than getting it from the two sides?

Mr. Westwell: Well, I would suggest that if you look at the strikes that have occurred that, at least from the Board's side, an intensive effort has been made to in fact inform the public of the issues.

The problem with the fact finder is that while the fact finder tells the public what the issues are at a

particular moment in time, those issues change within the bargaining process. In addition, and this is where I think the public does not understand, it is necessary in a bargaining process in order to arrive at that compromise, you often adopt a position which is in an extreme from what you are prepared to settle for.

For example, looking at money. Unions frequently ask for far more than they expect to settle for, twenty, thirty per cent and they will settle for four or five percent. There are political reasons that they must do it. Their membership is often as naive as the public about the process that goes on.

Ms. Bryden: Well, you do make some important points regarding the fact finders and I think they are things that we should be looking at.

Thank you, Mr. Chairman.

Mr. Chairman: Mr. Pollock?

Mr. Pollock: What area do you represent?

Mr. Westwell: I am employed by two Boards. Renfrew County Board and the Prince Edward County Board of Education through the Trustees' Association. This particular presentation is that of the Prince Edward County Board and their thoughts, it is not the Trustees Association's thoughts in this case.

Mr. Pollock: Not the Trustees' Association from -- just the Prince Edward County you mean?

Mr. Westwell: This is strictly Prince Edward County's view. It is not significantly at odds with the position you will hear later in these hearings from ESTA, but it differs in some details.

Mr. Pollock: In other words, you cannot claim that Renfrew County is supporting this particular approach?

Mr. Westwell: No. This is the approach supported by the Prince Edward County Board of Education and only them.

Mr. Pollock: But there is a good possible that Renfrew County would support this particular approach, isn't there?

Mr. Westwell: I would not rule it out.

Mr. Pollock: No.

Mr. Westwell: But at the same time they were not asked to support this particular approach.

Mr. Pollock: Your one comment I believe, on your last page there, you have more or less spelled it out quite significantly, that it certainly is not a "level playing field". The Unions hold all the trump cards?

Mr. Westwell: That is certainly how boards have felt for many years. I guess, one comment, perhaps the best model of collective bargaining in Ontario is found in the Labour Relations Act that governs non-academic employees of school boards, for example, as well as a large number of people elsewhere in this province. And it is in the area of strike lock-out and fact finding where you find the most significant differences between the School Boards and Teachers Collective Negotiations Act and the Labour Relations Act.

Mr. Pollock: Thank you.

Thank you, Mr. Chairman.

Mr. Chairman: Mr. Allen?

Mr. Allen: Thank you very much. I appreciate your coming to help us with this problem and it obviously is a problem or we would not be here.

Just pursuing your last comment. I wonder if you would venture whether there is some reason, from your point of view, why there is some difference between the collective bargaining relationship set out under Bill 100 and those which prevail under the Ontario Labour Relations Act for other employers. Does it have to do with the nature of the field? The nature of educational services and the kind of community investment there is in them? What, from your point of view, has lead to that difference? Why is it there?

Mr. Westwell: I am not certain why it is there. Possibly because back in the middle seventies, when the Act was originally put into place, there was a feeling that teaching was different from the other areas. Although interesting enough, a strike by caretakers can close the schools just as easily as a strike by the teachers. The Officer of Health can close the schools for sanitary reasons during a caretakers' strike. So, the risk to the community investment is probably as great in the non-academic area.

I am not certain that I can put myself into the place of the Legislature at that time. Although, the suspicion is there was a feeling of naivety; the teachers' unions were not experienced labour unions; there was some concern about the right of the public to know, which I think would probably be allayed today, you need only look at the significant advertisement that is carried on during a strike

by both the board and the teacher unions.

Mr. Allen: I would wonder whether the fact that education is a rather different product or commodity - I hate to use those words - then prevails in other sectors of the economy, which are governed by labour relations issues, and that so much of the community itself has a direct and immediate involvement through their children in that system; that there was not a deliberate attempt to build in more possibilities for settlement, public involvement, public education, and so on into the process so that hopefully that would help the solution rather than hinder it.

I would want to think, I think, at some length myself as to whether those circumstances still prevail and would want us, therefore, to have a more elaborate process. Notwithstanding the need perhaps to make certain that the elaboration of the process does not build in more impediments.

Mr. Westwell: Fact finding, as I understand it, was taken from the American situation in areas where public strikes, sector strikes, are not permitted. However, in that situation the fact finder's report is binding on the parties, in effect, a form of arbitration.

Mr. Allen: Yes.

Mr. Westwell: Of course, in our solution it is simply informative. And perhaps like many noble experiments, I think it served a purpose and was useful in some of the earlier days, but has perhaps run its course and has become that impediment.

Mr. Allen: Yes.

Mr. Westwell: One of things that happens in collective bargaining is that the parties have an immense capacity to avoid the issues until they are forced to deal with them; that is perhaps one reason why so many agreements are reached in mediation at four o'clock, five o'clock in the morning.

Mr. Allen: They wear each other out.

Mr. Westwell: Or finally admit "we are going to have to work this out, we cannot put it off any longer."

Mr. Allen: When you state fact finding as it now exists be eliminated, are you really referring to fact finding per se? There seems to be a hidden suggestion there that you feel that there is something about that that still is legitimate, but that somehow or other it needs to be modified rather than eliminated. I am not quite sure which way you are going here, I know that question was partially

asked earlier.

Mr. Westwell: What we are saying is, fact finding where it always occurs - if the parties do not have their agreement by the 1st of September - that should be eliminated; but there should remain a mechanism to have a fact finding-like process, which the Board of Conciliation provides under the Labour Relations Act, in those rare situations where the Education Relations Commission, or whatever neutral administrative body exists, determines based on a report from an employee of the that body.

To back up, if I may. The Conciliation Officer under the Labour Relations Act makes a report of the issues having met with the parties briefly, but there is no formal written brief to the Conciliation Officers; there is no public report from the Conciliation Officer under the Labour Relations Act; simply the recommendation to the Minister of Labour. We are suggesting a similar process for boards and teachers; that the fact finding process rather than being an automatic, 'always there' process, should be something that will be there in the exceptional case.

Mr. Allen: Yes, I note from statistics that we have provided that the fact finder is roughly employed in about half of the negotiation processes that occur?

Mr. Westwell: Yes, in fact, the fact finder would be used much more if the Education Relations Commission were not as creative as they are about when they appoint the fact finder.

Mr. Allen: I see. Would you like to elaborate on that for us? That carries a little bit of freight the way you said it.

Mr. Westwell: Well, the Education Relations Commission, the Act, as I recall, and this is bad paraphrasing, says, in effect, that a fact finder shall be appointed forthwith if there is no agreement on the 1st of September.

There have been occasions where fact finders have not been appointed until October, November, December. And these are situations where, as I understand it, the parties are reporting to the Education Relations Commission that they feel that progress has been made; that they are still hopeful that an agreement can be reached. I also suspect the Education Relations Commission probably does not have enough fact finders to be able to appoint everyone that would be required on the 1st of September, if they followed the Act in the strictest interpretation.

Mr. Allen: I assume that you have considered the fact that the Education Relations Commission appears not to have

the resources to be able to put fact finders into place when they are immediately required or normally would be required, but you have waived that as a very important consideration in terms of weighting the fact finding element itself in the process?

Mr. Westwell: If you are going to have fact finders, please, God, let them be experienced, knowledgeable; I would rather wait than have a poorly trained, very inexperienced fact finder.

Mr. Allen: We have had it suggested to us that while the fact finding, as it presently exists, has its problems - both in time and in personnel and allocation - that it nonetheless could be a useful process if it were to take place earlier in the process. I am not sure whether I would agree with that or not, obviously it is intended to do something about an impasse.

Is there an earlier stage at which fact finding could be useful?

Mr. Westwell: I think fact finding would not be useful prior to impasse.

Mr. Allen: Okay. Just a quick observation. I was going to ask you whether your concern about lock-out was more symbolic than substantial, and I think you answered that question by saying it made a great deal of difference whether there were symbolic powers at hand that were equivolent, even though they might never be used.

I gather that was your answer to that question basically?

Mr. Westwell: Yes.

Mr. Allen: We had it suggested to us by one board yesterday that there should be a mandatory limit on any strike situation; the process having been gone through in a somewhat more detailed time line than you give us, but that at the end of the day there would be a 30-day limit on the strike.

Would your experience suggest to you that building in a specific time for the strike itself would be more likely or less likely to produce longer strikes in general and to fill out the time available, so to speak?

Mr. Westwell: My suspicion is that the parties would fill out the time; they would serve their ritual pain, because that is what a 30-day limit would represent.

There is no question that the teacher unions have shown their determination, once they are on strike they are

prepared and will stay out over the issues; boards have also shown much the same determination. That is why we have had some very long strikes in this province. On the other hand, educational strikes relative to industrial strikes have often been very short, I mean, Inco has had strikes that have lasted more than a year.

Mr. Allen: Yes.

Thank you very much, I appreciate your help.

Mr. Chairman: Mr. Davis?

Mr. Davis: Thank you.

Mr. Chairman: There are also two more members who would like to ask questions.

Mr. Davis: I will not be long, Mr. Chairman.

Is it not true now, and I just need clarification, that prior to September 1st, a board or a teacher may ask for a fact finder?

Mr. Westwell: That is correct.

Mr. Davis: Is that correct?

Mr. Westwell: Yes.

Mr. Davis: Is it not also correct that, indeed, what happens - and I need your assistance because I think this happens - that sometimes what happens in Ontario is they ask for a mediator prior to August 31st. They get a mediator's report or they have met with a mediator, then they ask for a fact finder, then they ask for a mediator, and then what happens on September 1st, is they ask for a fact finder again.

Is that not part of the process that goes on?

Mr. Westwell: Yes, it is. The mediator is an extremely useful and helpful person in negotiations. One of the problems where you have inexperienced parties at the table is the ability to make the small movement from a position where you are looking for the reciprocation and you gradually come to that, wherever that dividing point is. There is often a reluctance to do it and a mediator is a person who can tell you how far you can move in confidence.

Mr. Davis: What I was really trying to point out, is that the ability to call a fact finder in prior to September 1st now exists and, in fact, is used in this Province?

Mr. Westwell: Yes, it is subject to the --

Mr. Davis: Approval by the ECO.

Mr. Westwell: ERC.

Mr. Davis: ERC. And they give it periodically.

Mr. Westwell: Yes.

Mr. Davis: If am correct, it is a negotiation ploy that can be used very effectively by either party, hopefully that the fact finder's report is much more favourable to their position than the other position, and then what happens is you revolve around it.

When you read the Matthews Report what they suggest - and I would like your comments on it - they give a time frame, so let me just use their time frame, which is 30-days after negotiations begin, which begin in September, either party may ask for a mediator; and whether it is appointed or not is the responsibility of the Education Relations Board. On the 75th day, which is roughly two months, plus a few days after it began, either party may request the mediator and the ERC has to appoint him.

It seems as you read the Matthews Report, that the Matthews Report recommends that the mediator becomes involved earlier in the game than apparently appears now and that the fact finder only becomes involved after August 31st. Would you find in that a more appropriate mechanism to be using?

Mr. Westwell: Well, as the Act now stands a mediator can be appointed at any point on the request of the parties to ERC and the approval of ERC, so you do not really need a change in the Act to do that. I would still have problems with the fact finder as set up in the Matthews Commission Report.

Mr. Davis: So, what you are saying is that fact finders should not be involved until after the termination of a contract?

Mr. Westwell: Yes. In fact, even going beyond that, if fact finding has any value at all, it seems to me it is the argument that it is for the public's right to know. And if that purpose is to be served fact finding should not occur until two or three weeks before the strike.

Mr. Davis: Okay.

Mr. Westwell: So, that the fact finder is reporting on the issues that the strike is about.

Mr. Davis: A final question, Mr. Chairman.

With the right to lock-out, one of the fears that has been expressed is that it then places into the hands of the board a tool, so that if the teachers were working-to-rule, which I understand it can be interpreted as strike action, boards then could lock them out; and the fear is that the boards would then lock them out.

Mr. Westwell: Under Bill 100 a work-to-rule is a strike and it is defined within the Act itself.

Mr. Davis: But boards cannot lock --

Mr. Westwell: A board can lock out at that point, but only after the teachers have begun the work-to-rule.

Mr. Davis: If teachers follow a work-to-rule prior to August 31st, or even after they come back in September.

Mr. Westwell: Yes, they cannot follow a work-to-rule prior to August 31st, that would be an unlawful strike.

Mr. Davis: Yes, they do it after. And boards do not have the right to lock out when they do or they do?

Mr. Westwell: They do once the work-to-rule has begun.

The problem is that the work-to-rule, consider the situation of a rural county board. You have children who are being bussed - not in the case of Prince Edward, it is a fairly small compact county - but in some of the larger counties, you have children who are being bussed several hours each way. If the work-to-rule interferes with the operation of the school, the buses have to be turned around and the children sent back home. If the Board perceives that the actions that the teachers are intending to take are going to be that disruptive the board truly should be able to lock out in advance so that those buses never leave.

Mr. Davis: The York County strike, which was threatened, the teachers indicated that they were going to go to work-to-rule. I understand work-to-rule for the teaching profession is, that they will not engage in extra curricular activity; that they will teach the time periods they are supposed to teach; that they will not be there early in morning to provide the extra study periods.

When a teacher engages in that kind of action, and that is a work-to-rule, under Bill 100 then they are in a strike position?

Mr. Westwell: That is correct.

Mr. Davis: Under Bill 100 then a board can lock them

out?

Mr. Westwell: Yes, but only they have commenced the work-to-rule. Day one of the work-to-rule in effect occurs because of the timing under Bill 100.

Mr. Davis: In your experience, has a board ever locked out there teachers because they have on a work-to-rule?

Mr. Westwell: Yes, Renfrew County 1978. Part of the work-to-rule was a withholding of grades to the grade 13 students. The Board locked out, teachers released the grades about approximately a week later. The Board lifted the lock-out, the teachers did not return.

Mr. Davis: Thank you.

Mr. Chairman: Mr. Johnson?

Mr. Johnson: Just one observations and maybe your comment. The Dufferin-Peel Roman Catholic Separate School Board presented us with a written brief with six points they made. The one, point three, that protects the rights of teachers and of boards, but it does nothing to protect the rights and interests of students. These interests must somehow be better protected, would you agree with that?

Mr. Westwell: It would seem to me that the interests of the students are legally the interest of the board. The board is responsible for the education of the students for ensuring that they receive that education.

Mr. Johnson: But how are we going to better protect the rights of the students? You are concerned with the lock-out, the rights of the board; the teachers are concerned with their rights; but who is concerned of the rights of the students?

Mr. Westwell: The board of trustees.

Mr. Johnson: Well, how do we change the Act to better protect the rights of the students?

Mr. Westwell: I do not think you can. I think the Education Act now charges the Board of Education with protecting the interests and the rights of the students.

Mr. Johnson: Thank you, Mr. Chairman.

Mr. Chairman: Mr. Callahan?

Mr. Callahan: You will have to bear with me. I am an interloper today and I want to sort of find out what is going on here.

I have looked at the Act. What I would like to find out is, are you suggesting that the referral by the teachers to a fact finder is just a delaying tactic?

Mr. Westwell: I did not suggest that.

Mr. Callahan: Are you suggesting that?

Mr. Westwell: I think that where a party requests fact finding prior to the mandatory date there may be numerous reasons for doing so.

Mr. Callahan: Well, I notice that if rather than submitting the items that have not yet been - and I have only looked at the Act quickly, so I am not sure, there may be provisions in there that I am missing - but if they did not refer the items that have not been resolved to an arbitrator and instead to a fact finder, then the question of lock-out or strike is held in abeyance under 12(2)?

Mr. Westwell: Well, a strike cannot legally occur until after the fact finder's report has been issued and has been released to the public with a passage of time. The referral of matters to an arbitrator is by mutual consent between the parties.

Mr. Callahan: That in fact stops a lock-out or a strike until the arbitrator has --

Mr. Westwell: Well, once you refer the matters in dispute to an arbitrator or a "final offer selector" you have, in effect, an agreement because you have agreed to be bound by the award issued by either the arbitrator or the final offer selector.

Mr. Callahan: I noticed in one of the briefs and, as I say, I have just arrived here today, but in reading through it, the period of time that elapsed between the notice of intent and the appointment of the fact finder was between January 31st and October; and yet, I notice the Act says, "The Commission shall appoint forthwith a person as a fact finder."

Does that happen frequently that that section, in effect, is breached by the Commission not appointing a fact finder forthwith?

Mr. Westwell: I am not commenting on whether or not the section has been breached. It happens fairly, at least in my experience, it happens reasonably often that there is a delay in the appointment of the fact finder. And in my own circumstances, there have been a number of occasions where the Commission has delayed and the parties have been

able to reach an agreement.

Mr. Callahan: In the Peterborough case they said:

"The notice of desire to negotiate was received January 31st, '86, and the proposal from the teachers was received May 29th, '86. On October 31st, '86, a fact finder was appointed and met with the groups November 24th."

Is this because there is not an adequate pool of fact finders or does this happen frequently?

Mr. Westwell: Well, my experience has been that I frequently asked the ERC to delay as long as possible the appointment of a fact finders.

Mr. Callahan: How could you do that?

Mr. Westwell: You would have to ask the ERC as to whether or not they have an adequate pool of facts finders.

Mr. Callahan: How can the trustee ask the Commission to do what Section 14 requires the Commission to do forthwith?

Mr. Westwell: You would have to --

Mr. Callahan: You are saying that the fact finding processes, I gather, may or may not be used by teachers to delay the process. But, in fact, what you are telling me is that you have, or the people you are with, have directed the Commission to delay the appointment of a fact finder as long as possible?

Mr. Westwell: With respect, I must correct you. I have never said that the teachers use fact finding to delay the process and I would not suggest that that is the case at all. The very existence of fact finding does delay the process.

It delays the process because the parties spend a great deal of time preparing for it because it does ultimately go public. They regard it as a step, if it is going to occur, as an important step in that their positions are shown to the public.

As to whether the Commission is breaching the Act or not, my understanding, at least from my side of any conversation with staff of the Commission, is that they do not believe that they are breaching the Act.

I guess, my suggestion would be, and my experience is, that where I have said to staff of the ERC there is no

progress being made in the negotiations; fact finding, though not necessarily useful, but since it has to occur, get on with it - the ERC has appointed very quickly and very promptly.

Mr. Callahan: Mr. Westwell, would you say that your practice, that you have just told us about in your testimony, you tell the Commission to delay the fact finding is a common practice by boards?

Mr. Chairman: Mr. Callahan, if you read the whole brief, or a little bit further in the brief, I think that the Peel Board explains how long it takes for the fact finder to get any results. So, what I believe Mr. Westwell is saying is that if they are close to an agreement why get the fact finder in in the first place, because he is going to take six or eight weeks.

Mr. Callahan: Well, the reason I am asking the question, Mr. Chairman, is that from what I have heard from the presentation, and I suppose from other presentations, is to eliminate the fact finder. What I am finding is that the delay sometimes can be caused by the delay in getting the fact finder; the legislation does not anticipate that. The legislation anticipates under Section 14 that it is mandatory; "The Commission shall appoint forthwith a person as a fact finder."

Somebody is shaking his head, Richard is, and he probably knows a lot more about this than I do.

Mr. Allen: I just think, Mr. Chairman, if I might interject, if you go on to look at the rest of Clause 14, it provides some conditions under which the "forthwith" shall happen. And the conditions are that one or both parties give notice of an impasse; or the Commission itself is of the opinion that there is an impasse; or that an agreement that was in operation has expired. So, that there are a number of conditions under which "forthwith" happens. It is not that suddenly there is "forthwith" and the Commission has to act. Is that a helpful point?

Mr. Callahan: So, in other words, what you are saying is that if it looks like things are going along and you are not going to need a fact finder and perhaps that all items or most of the items will be agreed upon, you delay the fact finder until that happens?

Mr. Westwell: Yes, I think, and I can only interpret the ERC's action, I cannot obviously put words into their mouth, but my suspicion is that ERC has found for practical reasons, pragmatic reasons, it is useful to not appoint all the fact finders required on the 1st of September, assuming they have a large enough pool, simply because the fact finding can delay the settlement.

You spend a minimum of four weeks in the fact finding process, sometimes longer; with the work that is involved in preparing a brief to the fact finders there is not much time left for negotiations; and there are times that position harder as a result of having to defend and justify them.

Mr. Callahan: Thank you.

Mr. Chairman: Thank you very much, Mr. Callahan.

Mr. Westwell, The Committee wants to thank you for coming forward and we appreciate your brief and your frankness with us this morning.

Mr. Westwell: Thank you, Mr. Chairman.

Mr. Chairman: Thank you.

Our second presenter this from the York Region Board of Education, Mr. Harry Bowes, Trustee. Please, come forward Mr. Bowes.

Mr. Bowes: Thank you.

Ladies and gentlemen, I am not like the previous speaker, a professional in negotiations. I am a trustee elected for the sixth term, the first term arising out of the unfortunate withdrawal of services in 1974.

The brief I have is a brief not of the Trustees' Association, but simply one, like the Prince Edward County, the position of the York Region Board of Education.

We do not have at the present time a tough relation, a bad relation, with the teaching profession; as a matter of fact, over the last number of years we have a very good harmonious relationship and that continues. Every week I have been -- last month curling with 98 teachers. I have been spending a couple days at the Elementary Teachers Public Speaking Contest. I have been complimenting twelve principals and twelve vice-principals on their recent promotions. We do have our concerns about the Bill and we have for quite some time, even previous to the Matthews Commission to which we made a presentation.

The first four pages of the brief are our support actually of the Ontario School Trustees' Council and the Trustees' Association, so I will not deal with that. On the fourth page, there are the positions that we have taken and I will just discuss those positions which are strictly our own Board's present position.

The first position that the Board has taken up is something you have been just discussing at length, the

elimination of the fact finder or the changing the rules for the appointment of fact finders and the tightening up of the process. And I think you will hear this week and throughout the proceeding that that is one of the concerns of all trustees.

I believe the fact finder process has hindered more than it has helped. Bryan Downie, who is now Chairman of the ERC, at a negotiation seminar at OISE in 1978, stated at that time:

"Results of fact finding are getting worse after three years."

And is it a wonder, the Commission has been required by the pressures of events - as we have just been hearing - to appoint persons as fact factors who may not have experience in labour relations nor the background in educational matters.

In many cases fact finding can be detrimental to the prospect of a settlement. It can insert an automatic delaying mechanism in the process. In reviewing fact finders' statements over the past week, and I have quite a few of them, but the one mainly that I picked out was one that was used in our own fact finder's report, Professor Robert Jackson. In his report he states:

"While it is difficult, especially for an outsider, to see through the maze of data and conflicting claims and to perceive reality in this very complex area, certain things are clear."

Now, that is the statement in writing, a public document, of a person appointed as a fact finder to discuss educational problems. And in other cases the fact finders that we have had experience with just do not seem to grasp the educational situation.

The second point that the Board supports is that principals and vice-principals should not be members of the Federation.

As a manager of a school the principal has many administrative functions. He is responsible for the evaluation of teachers; school organization; setting maintenance priorities with the department of plant; and supervision of secretaries, caretakers, and other non-teaching staff; and many, many other duties.

Professor Robert Jackson in his report, again, equates principals to chief executive officers in private and public sectors. And yet, Jim Forster, when he was President of OSSTF stated, and I quote:

"There is place in the Federation for a principal who feels he is a manager or administrator."

In York Region - Bill Davis was just mentioning this work-to-rule in our Board - we have had examples of work strikes, work-to-rule strikes, where the federation members were required not to enter the school before 10:00 a.m. in the morning and to leave at 2:00 p.m. with a prescribed lunch hour and a mandatory federation meeting accounting for more than fifty per cent of the time that they were in schools.

One option I think which is available, the same as for senior police officers under the Police Act, is that the principals and vice-principals can organize themselves into a bargaining unit separate from the lower ranks in the Force. And I think if you have studied the Police Act and the Hospital Act you will find that there are situations in there where that could be accounted.

The third, is the right to strike. And we feel that Bill 100 should not be expressed as a right to strike, it is the right of both parties to the collective bargaining relationship in order to find a solution to their differences.

In the presentations to the Matthews Commission in '79 our briefs were very similar to the Ontario Federation of Home and School Associations and to the Ontario Chamber of Commerce and to the Board of Trade of Metropolitan Toronto. Their position is still the same as ours in this brief. Unfortunately, a few days ago they were not aware of these Committee hearings and I am not sure -- hopefully they will be making a written presentation. The Board of Trade just delivered mine to this room before I arrived, for me.

The York Region Board of Education has taken the position both in this Committee and its response to the MacDonald Commission last fall, that strikes and lock-outs are not a logical solution to teacher/board differences and can a result in irreparable harm to children.

In 1976 the Minister of Educaiton launched a major research study into the effects of the Toronto teachers strike. The 122 page report showed:

A. The dropout rate increased 24 per cent of grade 13 and 22 per cent of grades 11 and 12, and gave the strike as the reason for the increase in dropout. I understand this government at the present time is doing a study on the fantastic large dropout rate on students in our high schools.

B. The average marks of students who were applicants

to university declined. There was decline in the number of applicants to post-secondary education as a whole. Student morale was low and their attitude was poor.

"The Effects of Teachers' Strikes on the Attitude and Perceptions of Grade 12 and 13" studied by Michael Fulton and Glen Eastabrook. And the "Effect of Ontario Teachers' Strikes on Students" by David W. Brison and Anthony Smith of OISE quoted:

"The drop out rate during the year was higher; there was loss of motivation for higher education; there was less adequate preparation for college and university study especially in mathematics and science; there was a decline in admittance to post-secondary education in the following year; and there was a sense of having been cheated by the system."

Jerry Cooper, Chief Psychiatrist at York-Finch General Hospital stated:

"An elementary school teachers' strike will cause serious and long-term damage to many children. Anyone who thinks that these kids are going to be able to go back to school and pick up where they left off is fooling themselves... Many of these kids will remember this strike for the rest of their lives... I do not blame them and I feel for them... Even a few days out of regular classes for such children could have long-term and tragic results. Young children are extremely idealistic, they need to believe in things like dedication and loyalty... A thing like this robs them of these feelings at too young an age... Just think of a parent who downgrades the teacher in front of their children day after day.... Can you imagine the effect that it is going to have on a kid when he goes back to school."

William Eull, an expert in child psychology and director of a Toronto clinic stated in a speech to the Ontario Public School Men Teachers' Federation:

"Teachers at elementary school will have to make a long and conscious effort to correct psychological effects caused by the strike action... The teachers now will have to talk to the pupils and parents who are affected by the strike and explain what happened."

Michael Fulton, Chairman of the Sociology Department of OISE, stated:

"The teachers lose more in public opinion and specific opinion of students than they win... An alternative to teachers' strikes must be developed."

The Education Relations Commission has the duty to advise the Lieutenant-Governor in Council when the successful completion of courses studied by students is in jeopardy. It has taken this course of action in the past, but only in a disjointed manner.

After teachers initiated strike action against one board in May the 7th, Shelley Struder, a student stated:

"It does not matter if the dispute is settled soon, we've only got five weeks of classes left anyway - the year's wasted."

This strike was not settled until September the 7th, but the teachers were never legislated back to work even though the students suffered. Several other unusual occurrences have occurred in teachers' strikes.

A lot of teachers went on strike in 1975 and yet when its strike fund ran dry on January 9th, 1976, the teachers made a submission to the Education Relations Commission on January the 10th, 1976, asserting that damage to the students would occur if the strike continued. A Bill was passed on January 6th, 1976, to open the schools. The Education Relations Commission recommended the strike be ended, quote:

"Not because the students' year was placed in jeopardy, but because there was special circumstances -- no early negotiated settlements can be anticipated."

In Sault Ste. Marie and Windsor the Commission recommended to the Cabinet that the strike be allowed to continue, but regardless, the government passed special legislation imposing binding arbitration.

Past decisions by the ERC seem to have been very erratic.

How did we get into this mess anyway? Even teachers' strikes have occurred in Canada since shortly after world war 1? In 1943 the CCF party was the official opposition. The government tried to head off unionism in the schools in return for compulsory membership that teachers relinquish the right to strike. The Teaching Profession Act of 1944 recognized OTF as the governing body of the teaching

profession with the first two objectives: To promote and advance the cause of education; and to raise the status of the teaching profession.

For thirty years teacher/board relations smoldered, culminating in a one-day general teachers' strike in 1973 and 42-day illegal withdrawal of services in 1974. Even in 1975, prior to Bill 100, Premier Davis stated:

"We are prepared to accept our responsibilities and we are saying very simply, in essence, that a way has to be found to see that the school boards and teachers in this province serve the legitimate ends of the school system and that is the students. We are saying as a principle in both Bills, 274 and 275, - which would have been satisfactory - that there has to be a solution other than by mass resignation or the word strike, which I do not like to use."

But because of strong, persistent, effective lobbying these Bills were withdrawn and replaced with Bill 100. After their initial support of the Bill it took only a few years for the Toronto papers to drop their support. The Toronto Star, one year later, stated:

"The teachers should not be allowed to have it both ways - they are either professionals or trade unionists."

The Globe and Mail stated:

"Having seen the handiwork of the ERC, Premier Davis should quickly conclude that it is a waste of money and should be tidied into oblivion."

On October 11th, 1979, Dr. Stuart Smith, then leader of the Liberal Party, reversed the position taken by his party in 1975 and called for the government to strip teachers of the strike. This position came out of a 34 member caucus and was supported at the time, according to the reports by Robert Nixon and Mr. John Sweeney.

In the industrial sector business may attempt to carry on business despite striking workers. One union of a major airline has been on strike for a year and at the present time the airline has continued to operate. In other sectors a person can be hired to fulfil an employer's needs until the strike is over, but this is impossible in the present structure. In addition, in industry the public can go elsewhere to obtain the product or service, but not so in education.

I have mentioned the insidious work-to-rule as a strike mechanism which, since it is a strike, the Federation can define what is and what is not allowable under the sanction. At the present time, as of yesterday, I understand that they have a tentative agreement as of last night and the students will be back to normal this morning. But when this was written the Roman Catholic School Board, after being successful -- the students have been successful I mean, in athletic tournaments, public-speaking contests, science fairs at their area level, were prevented from appearing outside the regional levels in any other activity. That is something to think about that is pretty tough on the morale of the students in the system.

In conclusion, the York Regional Board of Education is of the opinion that after protracted collective bargaining with the help of a mediator, final offer selection is a reasonable solution to impasse.

I must say on behalf of our trustees who have been elected to uphold the Education Act, which gives us the duty to provide courses of study and accommodation for children, that is our brief.

Thank you, Mr. Chairman.

The Vice-Chairman: Thank you very much, Mr. Bowes.

If you are willing we will have some members ask you questions.

Mr. Bowes: Certainly.

The Vice-Chairman: Mr. Lane?

Mr. Lane: Thank you, Mr. Chairman.

You have brought up a couple of matters that really concern me here. You talk about work-to-rule where the teachers are not required to be in the school before 10:00; they have a mandatory lunch hour; they leave at 2:00 o'clock; and 50 per cent of the time that they are there is spent in a meeting. So, that is the fact, as far as the students are concerned, it is a strike. There is nothing happening as far as the students are concerned. Is this the exception rather than the rule as far as what the rule is concerned?

Mr. Bowes: Let me read to you a statement of the Federation member from the Peel work-to-rule. And I quote. These are his words:

"We have chosen the work-to-rule as our strike weapon, but since it is a strike we can define what is and what is not allowable under the

work-to-rule sanction. The Education Act, board policies, and school procedures are superseded by this strike under Bill 100. Legality is not a consideration, since our right to strike takes legal precedence over other considerations. Do not judge yourself by professional standards set for yourself when the situation is normal."

That is a direct quote from that strike and I have here the documents put out during the work-to-rule distributed to the teachers, to the principals and vice-principals who are also members of the Federation, and must abide by Federation dictum, and I can share those with you.

Mr. Lane: If this is common in working-to-rule, then I can certainly understand why our last witness emphasized that after one day a lock-out could occur because there is certainly no point in bussing students in to a school where teachers are working under those circumstances.

Mr. Bowes: Those days that were mentioned were professional activity days at the end of June; there were no students in the school in those days. But the teachers had the responsibility - were being paid for a full day of school - they had a responsibility for a lot of work in those days. Here is the list of -- there is that one in particular, of a memorandum out telling them what to do and what not to do. They have had meetings that lasted, their Federation meetings, every day, that lasted well over an hour at times.

Mr. Lane: So, you are saying that those were not actually teaching days in any case?

Mr. Bowes: They were teaching days under the Education Act, but they were professional activity days designated.

Mr. Lane: So, there were not going to be any students there?

Mr. Bowes: No, but they continued on in the fall with a stringent work-to-rule which included no marking of attendance and no attendance shall be kept in any form, no seating plan shall be made and other work-to-rules which were almost as stringent except for the time line. And I have with me quotes from students during those days, what they felt of that work-to-rule.

Mr. Lane: Well, if that was the rule rather than exception, it would be very upsetting to me that that would be work-to-rule. To me it would be no benefit to the students. And also on page 3 you talk about the Toronto

teachers going on strike in 1975 and yet, when the strike fund ran dry, the teachers made their submission to the ERC on January 10th asserting that damage to the students would occur if the strike continued. It seems to me that they were not concerned about the students; they were concerned about the fact that the strike fund was dry.

Mr. Bowes: That was a report and I have that report here. It was a report in the paper.

Mr. Lane: So, in either case that I have mentioned, it seems that the students come last rather than first. In my estimation the schools are there for the students.

Mr. Bowes: That is our feeling and it is ludicrous that we have this right to strike, as everybody calls it, when your liquor store employees do not have the right to strike. How can this government --

Mr. Lane: You cannot do without liquor.

Mr. Bowes: Pardon?

Mr. Lane: You cannot do without liquor.

Mr. Bowes: You cannot do without the revenue from it. Why is it that the liquor store employees are not allowed to go out and strike, and yet, the teachers who are in charge of our children, are allowed to go out on strike? It is hard to understand.

Mr. Lane: Are you saying that we should out-the-door with Bill 100?

Mr. Bowes: I have said there that we are not in favour of fact finders, they are a waste of time. Mediation: we take credence to that kind of mediation. We have a mediator in now. We asked for a mediator right away. We find that mediation is good. Mediation, and after a certain length of time final offer selection for each party, whether it is a single final offer selection where the selector takes one position or he can pick different positions of each issue.

Mr. Lane: Well, it concerns me the way --

Mr. Bowes: Somebody has to protect the students and the trustees are not able to do it because of this Bill and because of the government regulations.

Mr. Lane: The way you have made your presentation it would seem to me that there is very little consideration given to the students, the way you see it.

Mr. Bowes: That is what we have found and I have

quotes from students and this was not during a strike, this is just work-to-rule. Nothing was done until after 11:00 a.m. and this was on a school day, this was not on a professional activity day. Nothing done all day. She would have gone home if she had lived in Stouffville; she could not because she was bussing too far away. If it had not been settled she would not have gone back to school. Those are quotes from students in my municipality.

Mr. Lane: Very disturbing facts.

Thank you Mr. Chairman.

The Vice-Chairman: Ms. Bryden?

Ms. Bryden: Thank you, Mr. Chairman.

Well, I appreciate you bringing your experiences to us in your very forthright brief. I am somewhat disturbed by your rejection of the right to strike because under the Canadian Charter most employees are considered to have the right to withdraw their services and to organize into unions or professional associations.

One of the quotes with regard to the studies of the right to strike from OISE was that these are professionals rather than trade unionists. It is hard to know where you draw the line. A lot of professional associations may not call themselves trade unions, but they fulfil the same the same functions and I think they should have the same rights under the Charter of Rights.

You say your alternative is mediation and final offer, but what happens if that does not work?

Mr. Bowes: Final is virtually binding.

Ms. Bryden: There have been unions that do not have the right to strike.

Mr. Bowes: Final offer selection is binding. I have examples here from most of the provinces across the country, I did that previous to the Matthews Commission. Mr. Matthews and John Crispo, two members of that Commission, asked me for them and I sent them all the Bills from the different provinces across the country.

We have problems in Quebec; we have problems in British Columbia with the teachers' strike; but where they have bi-level bargaining and binding arbitration or binding final offer selection in Alberta and Saskatchewan, they do not have a problem like this at all. Not as great as we do. And that disturbs me that they can... The number of strikes in Alberta over a ten-year period, that is as many as we have in a year. And no 42-day strikes. The longest

strike -- oh, I am sorry, that is too many, it was much shorter than that.

The longest strike was 22 days, two at 15 days, one at 10 -- 9, 10 days. That is how long they last in Alberta. I have a letter here from Douglas McArthur of the Office of Minister of Education, Continuing Education in the Province of Saskatchewan and also one here from the Honourable Gordon Currie, Minister of Education. Mr. McArthur's letter states:

"Since the introduction of this structure of bargaining there has not been any disruption in service resulting from negotiations at the provincial level."

I do not know why other provinces -- supposedly in 1974 the government investigated collective bargaining across the country, but we seem to come out with the worst Bill.

Mr. Pollock: I have a supplementary to that. But they do have the right to strike though. They must have or or they not have been to able strike?

Mr. Bowes: In Saskatchewan they have a choice, at the beginning of collective bargaining they set out their choices and they can either go to strike or they can go to compulsory arbitration, and they take the choice that will end in....

Mr. Pollock: But the bottom line is that they still do have the right to strike?

Mr. Bowes: No, not in all provinces. Saskatchewan usually does not; Manitoba does not have the right.

Mr. Pollock: How can they strike then?

Mr. Bowes: Pardon?

Mr. Pollock: How can they strike then?

Mr. Bowes: Manitoba have illegal strikes; they must be illegal strikes if there are strikes in Manitoba, in education.

Mr. Pollock: They must. But in Saskatchewan I thought you said they had been on strike and yet you say they do not have the right to strike.

Mr. Bowes: No, no, no. This is Alberta.

Mr. Pollock: Alberta?

Mr. Bowes: Alberta has the right to strike.

Mr. Pollock: They have the right to strike?

Mr. Bowes: In Alberta the teachers are under the Ministry of Labour. This came from the Conciliation and Mediation Branch of the Alberta Department of Labour, this is where it is coming from, at the bottom. And that is all the strikes they had in 10 years and the duration of them.

Mr. Pollock: But they do have the right to --

Mr. Bowes: In Alberta they have the right to strike, and they have had nine in ten years.

Mr. Pollock: But in comparison with the population of the province Ontario, really we could have fifty?

Mr. Bowes: Well, fifty in ten years is high.

Mr. Pollock: Maybe even more than that, I don't know. I am just taking figures off the top of my head.

The Vice-Chairman: Ms. Bryden?

Ms. Bryden: Thank you.

Well, we are not completely familiar with the legislation all across the country, it would appear that the number of strikes in relation to the number of negotiations is still pretty small in all provinces, regardless of the legislation, and in Ontario, in particular. And it is certainly cutting out an awful lot of people from their right to use that sanction if we just abolish them.

Compulsory arbitration is only as good as the arbitrator and if people have confidence that the arbitrator will be fair they may not resort to illegal strikes. In our hospital services, who have not had the right to strike under provincial legislation, there is still considerable feeling that hospital workers constantly fall behind other occupations that require a similar amount of skill and time and effort. And I think that the alternative to the right to strike is very difficult to find.

When you mentioned that the former leader of the Liberal Party, Dr. Stuart Smith, came out in 1975 for the government to, as you say, "strip teachers of the right to strike", did he have an alternative?

Mr. Bowes: I am not familiar, but that came out after a rather bitter strike with... Are you saying that, you know, not many people affected this strike? That strike affected over a 100,000 students in the City of Toronto, well over a 100,000 students. That is a lot of students.

I am not sure what, being in opposition at that time, he would probably recommend a committee or a study. But I must say that you do not see hospitals closed up, you mentioned the hospital. You do not see a hospital closed up because of labour relations and I do not think you should see schools closed up because of labour relations either.

Ms. Bryden: Well, it is a question of how many others you are going to close up. The Liquor Board employees are very hard to justify, they happen to have been brought under the Crown Employees Act by the former Conservative government. I do not know why, it seems to me to be deprived of the right to buy liquor is not a very serious inconvenience for the public.

Mr. Johnson: Mr. Chairman, I wonder if I could have a supplementary on Mrs. Bryden's question?

The Vice-Chairman: Well, you are coming up next for a question.

Mr. Johnson: She raised a topic I just want to qualify on.

Ms. Bryden: I will not be much longer.

On page three you quote Professor Michael Fulton, Chairman of the Sociology Department of OISE, commenting that teachers do lose more in public opinion and the specific opinion of students than they win. He deplored that and I think we all do. Some of it is, I think, lack of understanding of the collective bargaining process. But he says, "an alternative to teachers' strikes must be developed". Have you approached Professor Fulton since he made that statement as to whether he has an alternative?

Mr. Bowes: No, I do not. But we spent quite a bit of time on the Matthews Commission. We prepared quite a strong presentation to the Matthews Commission; our Board, the Director of Education, accompanied me, and I had just piles of data from other provinces and a lot of alternatives there, but we did not get a lot of support. The alternatives, I think, are really in strong mediators who are experienced in the field of education and then, after that length of the time, if there is not a settlement, then either an arbitrator, binding arbitration, or final offer selection by people who are experienced in education. We have all kinds of directors of education retiring at 55 years of age that know the system inside and out that probably would be effective as arbitrators or final offer selectors.

Ms. Bryden: Just one last question, Mr. Chairman. In how many cases did your Board invoke the jeopardy clause,

asking the ERC to determine jeopardy?

Mr. Bowes: How many?

Ms. Bryden: You have had some strikes, have you?

Mr. Bowes: Well, we had the original illegal withdrawal of services in 1974. We have had two strikes since that time, but one was a CUPE union and the other was the one in '79 with a long work-to-rule and then a slight closure of the school. But, as I say, since 1980, seven years, we have not had a problem. We have had good relations and good settlements since they lost their court case that they brought against us.

We are concerned about the students, the hundreds of thousands of students across Ontario. In some cases students can be out a couple of weeks, you know, you cannot just pick a student, you know, there are so many special children out there, especially in elementary level where they are becoming more prominent right now. And you cannot just pick a bunch students and say it is in jeopardy. You can have a student out for a couple of weeks and their courses are in jeopardy, courses of study in jeopardy. Others are smarter than others and can be out for a month or two and do a lot of homework and git may not affect them that much.

Ms. Bryden: You did not ask for a review of jeopardy by the ERC?

Mr. Bowes: No, I did with Owen Shine. I spent two hours with Owen Shine at one time when the decisions were erratic. He stated in both no those cases that the jeopardy of the students' courses of study was not in jeopardy, the school year was not in jeopardy, and yet the government, you people overruled him, and legislated them back to work. So, you know, it has been very inconsistent. He said they were not in jeopardy, but is a labour man, not an educator.

Ms. Bryden: Mr. Chairman, we are getting into an argument about jeopardy which is, I think, a legitimate one. But I wondered if we could ask our researcher to get us a list of the number of cases where the ERC has been asked to rule on jeopardy, as well as to perhaps give us a picture of the number of the strikes in the last five years.

Mr. Bowes: I have them right there.

The Vice-Chairman: That is a good point, Mrs. Bryden, and members. Actually the time should be up for this presenter, but if you want to keep your questions brief, I have four more and I will start with Mr. Johnson.

Mr. Johnson: Yes, I will be very brief Mr. Chairman.

In fact, I did not intend to ask this question, but Ms. Bryden brought it up and it excited my curiosity.

On page 4 you mentioned that Dr. Stuart Smith, the leader of the Liberal Party, reversed his position in 1975 and called for the government to strip the teachers of their right to strike. This was supported by the Honourable Robert Nixon and the Honourable John Sweeney. Have you conducted a study or asked any questions in the year 1987 to determine what positions the Liberals hold on this issue now?

Mr. Bowes: No, I have not, but I will grab Rick Sorbara one of these days pretty shortly and find out from him because he is my Member of Parliament. I know there is written correspondence from the Liberal education critic at that time proving that he was --

Mr. Johnson: Well, Mr. Bowes, since you go back to 1943 in the CCF, I would think that it would be imperative that you delve into this year and their position today. Thank you, Mr. Chairman.

Mr. Bowes: I shall do that. This was rather brief, this came up a week and a half ago and as you see I have been away for eight days of it so it was sort of a rush job.

The Vice-Chairman: Mr. Lupusella?

Mr. Lupusella: Thank you, Mr. Chairman. I have a few points that I would like to raise on the issue of right to strike which is on page 2 of your presentation. I was very impressed about the detailed and analytical expression of the detrimental effects which can be caused by a strike. It appears that board after board appearing before this Committee emphasized the issue that something must be done to try to prevent a strike when a collective agreement or an agreement is not reached.

It appears that the boards emphasize the issue that when a strike is called by the teachers the whole situation is out of hand and the board actually does not have any leverage to make sure that the two parties are getting together again to make sure that an agreement will be reached. And most of the time when there is a prolonged strike, the Parliament has to intervene on the issue to co-ordinate the teachers back to work through a legislation which is passed by Parliament.

Now, I do not have any problem with the principle of the right to strike which is contained in Bill 100. What I have a problem with is that the principle of students' rights to education is not protected at all when a strike is called by the teachers, nor the board has some teeth given by Bill 100 which can be invoked to make sure that the

teachers will not play games to reach their agreement, and the strike will not be prolonged because the board then has to emphasize the issue of jeopardy and also the detrimental effects which you emphasized on page 2 of your presentation, which starts with item A, the drop-out rate, which increased 24 per cent at grade 13 and 22 per cent. The average mark of students who were up against university declined and there was a decline in the number of applicants to post-secondary education, and the student morale was low and their attitude was poor.

Now, my wife is a teacher and I think that she was on strike maybe two years ago for a short period of time and she was telling me that responsible teachers have to do extra work to recoup the lessons that students lost during the course of the strike.

Now, do you not agree with me that instead of talking about work-to-rule legislation on Bill 100 we need such a device which gives the power to the board when a strike is taking place, that because they are the protectors of students' education and so on, they have a responsibility toward the residents. They can invoke the power of such device which we must give to Bill 100, to make sure that the whole process of an agreement will be reached as soon as possible.

Do you agree with me or do you disagree with such a proposal?

Mr. Bowes: I agree with you. I am not sure how we are going to do it. We talked about 1944, the Teacher's Professional Act; it is a compulsory membership and automatic check-off, it is closed shop - as closed as you can ever get in any union. We are a growing Board; we have 4,000 applications a year from teachers. We are hiring about 300 and 350 a year. We have 4,000 applications, very good young, smart teachers which, in a strike, we could hire and continue to operate, but we are prevented from doing that.

How do you protect the students? You can cut off the PA days that are coming and make them teaching days, but you cannot go into the summer. That this a sacred cow or sacred bull - I do not want to be sexist here, but how do you make up the time? Are going to have the teachers working July and August? What can you do? I am not sure. That is because the right to strike causes these problems.

Mr. Lupusella: I agree with you that they are problems and I am sure that members of this Committee are extremely concerned about the detrimental effects of a strike.

The question is, that to defend such principles we are

ignoring the detrimental effects on the students, and I am just wondering if you can find a device, a legislative device, which will be incorporated in Bill 100 which gives the power to the board that if these detrimental effects occur and, in particular, the jeopardy issue of the students in relation to the school year, when they invoke that power has to call the union back to the bargaining process because at this point in time when a strike is taking place and it is very long, the only person that can legislate teachers back to work is the legislation and not the board, so the board is out of the picture completely.

Mr. Bowes: Bill 100 supersedes all legislation, the right to strike. It supersedes, as it has been shown three months ago by the Chairman of the Education Relations Commission, it supersedes a collective agreement in force even, unfortunately.

Mr. Lupusella: Thank you, Mr. Chairman:

Mr. Bowes: Thank you

Mr. Pollock: Well, I have a letter on my desk right now complaining about a board closing a school in a certain area and moving the kids to another area possibly twenty miles away. So, when you make your comment that boards are always concerned about students, really that is not always factual, that boards move these students to other places, with little regard to the students or the parents in that particular area.

Mr. Bowes: I think the regards there are for the students. Four weeks ago I made another presentation to the Honourable Robert Nixon on capital funding and if we had all the capital funds we need we could probably keep those schools open. But the best educational environment for a child is a school where the facilities are best; where the resources are best; where everything is best for that student; you cannot often do it in small schools.

Mr. Johnson: Not when they have to spend two hours a day on the bus.

Mr. Pollock: No, no. And in some of those big schools drugs and alcohol run rampant, that is a fact.

Mr. Bowes: Well, I am not sure of your case, but we do not --

Mr. Pollock: Well, that is the general case all over the province. Drugs and alcohol are running rampant in some of those big schools.

The Vice-Chairman: That is not quite Bill 100.

Mr. Pollock: I know.

Mr. Bowes: That is a problem in your McDonalds, that is a problem in you arenas - I was president of minor hockey - it is a problem in your halls over the place, not only schools.

Mr. Pollock: Thank you, Mr. Chairman:

The Vice-Chairman: Mr. Callahan?

Mr. Callahan: Well, I have a number of observations to make.

I find that you are the first group to come before us suggesting the removal of the right to strike, and I can understand where you might be coming here in a similar emotional vein as occurred in the House at least once, perhaps twice since I have been a member, where things have gotten to the stage where frustration is shown on the faces of all parties of the Legislature, at least the official opposition of the Government, and I am not certain about the third party.

First of all, I would like to ask you, your brief is the York Region board of Education?

Mr. Bowes: Yes.

Mr. Callahan: And yet it is signed by you; is this the position of the Board or your position?

Mr. Bowes: I made up this presentation and had it approved by the Board. The Board approved it.

Mr. Callahan: This is the Board's position?

Mr. Bowes: This is the Board's position, yes. This is the Board's.

Mr. Callahan: You have made some suggestions --

Mr. Bowes: And this position coincides with the Board's response to the MacDonald Commission which had an article in there about strikes and about...

Mr. Callahan: It is interesting that, and I agree with some of the statements in there, certainly the results of the Ministry of Education's research study into the Toronto teachers' strike. And I agree with my colleague that sufficient emphasis perhaps has not been placed on the students' legal right to receive an education, but it is kind of like we all know that the cat has to be belled. We want to do it fairly so that everyone receives equality. But if you talking about binding arbitration, I have seen in

the municipal areana - I am sure any of us who have been in the municipal areana - that binding abitration usually results in awards that are far higher than perhaps are achieved through collective bargaining.

Mr. Bowes: You have to weigh that against the students, the education of the students, which we are elected to provide. The Education Act states our duty, the duties and responsibilities of the trustees and boards of education. And it is our responsibility to supply a course of instruction 185 days a year plus accommodation.

Mr. Callahan: Well, without trying to tar with a broad brush what goes on in negotiations on either side, would you agree that the trustees, being elected representatives, are as interested in getting re-elected as any other politician is and, accordingly, do not want to raise the mill rate so high that in the next election they might not get re-elected?

Mr. Davis: If your government would fund education at least to the level it was before it would not have any problem.

Mr. Callahan: Bill in the vein of you predecessor who has the same name, that lack of funding came about under your government so I suggest you --

Mr. Davis: You have the lowest level of educational funding in this province than you have had in 16 years and it is the direct responsibility of the Liberal government.

Mr. Callahan: It all came about under the Conservative government, Mr. Davis, under Mr. Davis.

Mr. Lupusella: That is a cheap shot.

The Vice-Chairman: Thank you very much, Mr. Callahan.

Mr. Callahan: But I just ask that question; maybe that is a rhetorical question, but does that play any part in any of the negotiations?

Mr. Bowes: In negotiations? The board saves money on strikes, you are aware of that. Every time there is protracted strike the board is not paying teachers' salaries. Our budget is \$200-million this year, 80 per cent of which is salaries. We are not paying those salaries in a strike and we had a 42-day strike. We are saving a lot of money for the taxpayers, but that is not the prime consideration at all.

Mr. Callahan: But my question was, does that not enter into the question of how the Trustees negotiate with the teachers? I mean, there is games on both sides, quite

obviously?

Mr. Bowes: Compensation is only one issue. In 1975 we had 52 issues on the table from the teachers. The monetary issue was the big one at that time. They got a 34 per cent increase in wages, 34 per cent in our contract. In 1976 they came back with 54 issues on the table and another large request for money and, since that time, we have had at least one issue on the table from the teachers of which the salary is only one; you would not believe.

If you see the first presentation, first submission of the teachers in February, they go to every teacher - and we have over 3,000 teachers - put in what they believe they want in, and that goes to the Economic Policy Committee of the Teachers' Federation and they take them all out, put them in a submission and give them to the Board. Service allowance? I was the only one at the table of fifteen or twenty people that served in the services and yet, every year it came back: more service allowance, more service allowance. Things like that, anything, you wouldn't believe it! It is not all monetary. Monetary is just one type of....

Mr. Callahan: You see, I view it that teachers, a large majority of them that go into the profession, have a concern about educating young people. I do not want to create a dissent as does occur between themselves and their students when they go out on strike. But I find it that, as my colleague said, there should be something specifically in the Act saying, requiring both sides, that they should be negotiating on the basis of what is in the best interest of the student. I am sure that everyone would say that is what they do, but that should be a mandatory item in that Act to say that is mandatory and not wait until it gets to the stage of the Commission having to say that it has deteriorated to that stage because by that time it has deteriorated, so badly, that these young people, who we should all be working for, are destroyed.

Mr. Bowes: As I said, our relationships with our teachers are very good. I was chairman last year and I had three lunches with the elementary federation's president, three lunches with their secretary, president. We go out all the time. I think back to last year to those bitter strikes in Grey and Wellington County and boy, I feel for those kids and those parents, for the people in those two counties.

Mr. Callahan: Thank you, Mr. Chairman.

The Vice-Chairman: Thank you, Mr. Callahan. Thank you very much, Mr. Bowes. I appreciate your presentation and taking the time to come down and giving your opinion on Bill 100.

Mr. Bowes: Thank you very much.

The Vice-Chairman: Before we proceed to the next presenter, I have an answer for Ms. Bryden in regards to ERC cases versus the jeopardy decisions.

There have been eight since 1975-76, and that includes '85-86. Eight cases.

The Vice-Chairman: Now, we have practically one hour later than time was scheduled for. Anne Atkins, who is a private citizen, welcome to the Committee. And when you are ready, please proceed.

Ms. Atkins: Thank you very much, Mr. Chairman, and Committee members. I have been waiting for this opportunity for twelve years and I have a lot I would like to say.

The Vice-Chairman: Well, it is your day.

Ms. Atkins: Thank you, because I do care about the students and that is why I am here.

I really do appreciate the opportunity to present my views on education. Is it all right if Mr. Bowes sits here?

The Vice-Chairman: No problem.

Ms. Atkins: Sure. Okay.

I am a former Ontario public elementary school teacher. I finally left teaching in 1975 because of disagreement with developments in education between 1970 and 1975. Since then I have followed education closely. I have written numerous letters dealing with education issues to newspaper editors and politicians. While engaged in university studies in '84-85 I researched a number of topics relevant to education in Ontario. Since 1985, December 1985, I have been a trustee on the York Region Board of Education. However, today I am here to speak not as a trustee, but as a private citizen. And I have titled my presentation, "Bill 100: A Stumbling Block to Progress in Education."

What motivates me to come before this Committee is concern for the future of our youth.

The economic and social climate calls for change, particularly in education. If that change is forth... You can tell this is an emotional issue for me.

The Vice-Chairman: Well, Ms. Atkins, just take your time. You should not be nervous with us, we are just common citizens like you are. We are all elected, so just take

your time.

Mr. Bowes: That is why I came up here. Ms. Atkins and I are trustees on the same Board. She is making her presentation.

The Vice-Chairman: Just take your time and feel at home. Take the time you want.

Ms. Atkins: All right. I think I can go on.

Even a brief glance at the Canadian economic and social picture reveals cause for concern.

In 1960, Canada ranked second only to the United States in industrial output per hour. By 1985, however, Canada had fallen to seventh place among leading industrial nations. Between, 1973 and '83, unit labour costs rose by 125 per cent in Canada, 75 per cent in the United States, and declined, actually declined, in Japan below the 75 level. The sharp deterioration in Canada's competitive position has been attributed to low productivity and high wages. Youth unemployment remains high yet employers find it difficult or impossible to find enough skilled workers to meet their needs. Between 1975 and '85, the federal deficit increased to the point where interest charges on this debt consumed one of every three tax dollars. As you are no doubt aware the list could go on and on.

It would be simplistic indeed to assume that changes in education alone will be enough to improve Canada's prospects. Progress will only be made through the co-operation of all Canadians. Nevertheless, the school is the only institution that has contact with all young people; therefore, educators by worthy example can, and do, have a great influence in shaping the attitudes and skills our young people take with them into the work force and into all other aspects of the their lives.

By the late seventies there was general recognition that improvements must be made in education, particularly at the high school level. In 1984, after four years of study and preparation, the Ministry of Education published OSIS, a blueprint for major improvements in education. The changes called for by OSIS include the expansion and improvement of the technological studies, the expansion of co-operative education and the upgrading of language skills. If implemented successfully, OSIS recommendations would create a education system more capable of meeting social and economic needs.

Now, one may ask what does all of this have to do with Bill 100? My answer is, that I believe Bill 100 is a stumbling block to process and change in education.

Bill 100 anchors the teaching profession firmly in an unsatisfactory past. It institutionalizes and legitimizes rigid and counter-productive trade union practices at a time when the utmost in flexibility and professionalism is needed on the part of our teachers.

Co-operative education, for example, requires different modes of delivery with much interaction and co-operation between educators and business and industry. This may be very difficult to achieve with teachers restricted in their activity by the increasingly long, rigid, complex contracts being negotiated under Bill 100.

The local contract negotiations called for by Bill 100 foster an on-going adversarial relationship between school boards and teachers. They have kept salary and benefit levels higher than the productivity of the school system has warranted. Local negotiations consume much time and energy that would be better spent on improving the quality of student programs. A classic example of this is occurring in the York Region Separate School system. Contract negotiations there have already dragged on for more than a year. I understand they have ended now.

Provincial-level contract negotiations have been used in Ontario's college system for twenty years. The MacDonald Commission committee studying the financing of elementary and secondary education in Ontario, recommended that province-wide bargaining replace the local bargaining called for by Bill 100. I believe this would be in the best interests of the province.

Striking, which includes work-to-rule as a means of settling disputes in education, is also a source of concern to many people - and for good reason. It is the most visible symptom of adversarial style of labour relations that has been so damaging to the Canadian economy. Between 1972 and '82, for example, 26-million days of labour were lost in Canada due to strikes, walkouts and lock-outs, more than in any other industrial country, except Italy.

Surely educators by word and example have an obligation to foster in our youth the development of interpersonal skills and attitudes that would lead to the co-operative style of labour relations so obviously needed in Canada.

Economics aside, strikes in the education system harm students and, therefore, are unethical. Documented effects of strikes on students include higher school drop out rates during the strike year, especially in grade 12 and 13; lower marks in such subjects as mathematics and science; decreased motivation for further education; and decreased respect for teachers.

To maintain their motivation for school work, many students need to establish a relationship of trust with their teachers and this relationship is damaged by a strike. I know personally of one instance where an enthusiastic grade nine student never regained his enthusiasm for education after a long teachers' strike. Research indicates that this reaction to a teachers' strike is quite common.

I believe it is worthwhile at this point to pause for a brief look at history because, as the saying goes, "If you do not know where you have been, then how do you know where you are going."

The Teaching Profession Act was formulated and passed very quickly in 1944 to ward off a strong movement at that time toward trade unionism among teachers. The Ontario Teachers' Federation was set up to establish and maintain professional and ethical standards in the teaching profession. In exchange for membership in this organization, teachers gave up the right to strike.

During the 1960s, high school teachers in particular began to push for higher status and more power. They opted to use striking as one means of exerting pressure on school boards in efforts to improve salaries, benefits and such other working conditions as PTR.

During the early seventies, the Ontario Secondary School Teachers' federation became more militant and aggressive and other teacher groups followed their example. The Ontario Teachers' Federation gave its blessing and its support to this activity. Though teachers were not entirely to blame, the end result was unprecedented disruption in Ontario's education system and Bill 100 was formulated and passed in 1975 on my birthday, July 18, to bring order to a chaotic education scene.

The use of pressure tactics such as striking have kept Ontario teachers' salaries high, especially at the secondary level. This would not be a source of concern if our school system had been efficient and productive, however, that has not been the case.

Forty per cent of students are still leaving before graduation and the 70 per cent who go directly into the labour force from high school have few job skills.

Canada has been spending a greater percentage of its gross national product on education than most of its competitors. Education expenditures for 1982 as a percentage of the gross national product, for example, were Sweden, 7.7 per cent; Canada, 7.4 per cent; Belgium 6.1 per cent; West Germany 4.1 per cent; and Japan 3.9 per cent.

What we have here in education, in fact, is a classic

example of the low productivity, high cost per unit syndrome that has characterized Canadian industry in recent years and it is making it increasingly difficult to this country to compete in world markets.

An additional factor is that Bill 30, the Separate School Funding bill, allows for student transfers from one system to the other; therefore, a strike in one system can also bring disruption in the other because students form a strike bound Board make seek admittance to the other school system for the duration of a strike.

Most Canadians in the labour force, 70.3 per cent, are not unionized, seven out of ten Canadians are not unionized and do not strike. Why, therefore, do teachers?

Public opinion surveys taken by the Ontario Institute for Studies in Education on a regular basis since 1978 consistently show that the majority of members of the general public do not believe that teachers should have the right to strike. All things considered, what possible justification is there for allowing strikes to continue in the education system?

Another major concern with the present system is that Bill 100 makes no provision for a realistic, fair means of dealing with surplus teachers. At present, the traditional trade union practice of seniority is still used. I will cite just two of the many examples of this. The early years of a child's education are the most important, providing, as they do, the foundation on which all else is built. However, in Scarborough, teachers with seniority but no special training, interest, or experience in early childhood education have been allowed to replace experienced, qualified teachers in these classes.

Science and computer technology are key areas in Canada's economic future yet, in 1984, North York's most experienced computer science teacher and one of its most qualified science teachers were both dismissed because enrolments had declined and they had less seniority than other less qualified teachers.

Teachers' Federation justifies such cases by stating that seniority is the only fair way of dealing with teacher redundancy. Fair to whom? Fair to whom, I say? Students? The public? Hardly. An education system that places the material welfare of teachers, regardless of their interest, their ability and productivity, ahead of the right of students to gain a quality education cannot function as efficiently as it should and must.

Another factor that I believe needs to be given serious consideration is pupil-teacher ratio. This is a negotiable item under Bill 100 and teachers continually

press for lower PTR, claiming that the lower the PTR the higher the quality of education. However, recent research reveals that this belief is not necessarily true - or if it is true at all.

After conducting analysis of thousands of research studies dealing with factors affecting educational achievement, one researcher stated that reduced class size has small positive effects, but is expensive and draws money and effort away from factors with large effects. This researcher went on to note that though Japanese school classes are often three times the current U.S. average of 17 students per class, Japanese students consistently rank highest among nations in mathematics and science achievement.

I believe that education agreements should allow for flexible PTRs. It is desirable and necessary to have smaller classes for younger children and in subject areas where specialized facilities such as labs are needed, but in other cases considerable savings would result if class sizes were larger and an assistant hired at a lower salary to help with marking and providing extra help for needy students. The savings could be profitably spent in other ways, such as increased funding for primary education and the provision of more quality resource materials for students in all grades.

To sum up: If fully implemented the improvements called for in OSIS would be a major step toward the creation in Ontario of a flexible, progressive education system capable of meeting pressing social and economic needs. However, Bill 100 is an obstacle to progress in education because it institutionalizes trade union practice when we need flexibility and professionalism.

Local negotiations called for by Bill 100 are inefficient and a source of teacher-board conflict. The increasingly long complex contracts being negotiated under Bill 100 make it difficult, if not impossible, to implement co-operative education programs as effectively as possible. Striking is a harmful means of settling disputes in any sector of the the economy and should not be allowed at all in the education system.

Bill 100 makes no provision for a fair and ethical means of dealing with surplus teachers. Finally, as a means of making education more cost efficient, education should be governed by legislation that allows for flexible PTRs.

I believe that replacing Bill 100 with a new piece of legislation dealing with the above issues is essential if progress is to be made in education.

Thank you.

The Vice-Chairman: Thank very much, Mrs. Atkins. As you can see, it was not all that hard.

Ms. Atkins: No. If I could do it over I would not be so emotional about it.

The Vice-Chairman: Well, you did very well. We certainly appreciate the sincerity in your brief and your remarks. If you are ready we will have some questions for you.

We will start with Mr. Allen?

Mr. Allen: Thank you very much, Mr. Chairman, I appreciate the fact that you have come this morning as an individual and have made your arguments before us. I know that when we have been involved in a number of other Committees, we from time to time have had sometimes quite large groups of individuals come forward, and I appreciate this rather intimidating kind of situation to find yourself in.

Ms. Atkins: Oh, you did not frightened me. It is just that, you know, these situations...

Mr. Allen: I also recall as a young lecturer what difficulties I had reading my notes as distinct from just talking about the subject. I am sure you who have felt more relaxed just talking to us in an off-the-cuff kind of fashion.

However, and you might not be surprised, I really do take issue with the central thesis of your whole paper. Are you aware of studies by private sector economists, for example, that tell us that the low productivity of the Canadian economy really has very little to do with labour patterns, or labour habits, or the structure of labour relations, but principally as a product of the failure of Canadian management and entrepreneurialism to take advantage of innovation and to modernize factories and so on, so that one can, in fact, get the per unit costs of production down?

I think if one pays attention to those studies one gets a different view of the question as to how labour relations perhaps does bear on the kinds of questions you have raised.

Ms. Atkins: I know what you are saying and I could speak quite at length on that, too. This is a very complex issue and I know there are number of factors involved in the labour situation other than, you know, the ones that I have mentioned, and I recognize the validity of yours, too. That is why I say, if we are going to make progress it will have to be a co-operative effort; it is not something that we can just expect our teachers to do or our educators, or our

legislators. It is whole tenor of life in Canada. I recall reading a statement by W.A MacDonald, who is with the legal firm of McMillan, Binch here in Toronto, and he stated that, you know, Canadians are less realistically attuned to the realities of the world situation and their need to pay their way in the world. So it is a general problem and I recognize the truth of what you are saying.

Mr. Allen: Well, one could discuss at some length as to whether Canadians did or did not have a realistic outlook on the world situation; those are difficult statements to prove or disprove and they are very general.

Ms. Atkins: I know they are.

Mr. Allen: You also cite at one point as one of your authorities Ronald Anderson with regard to some aspects of your case, and was struck reading a Ronald Anderson article not long ago, in which he was highly critical of the entire pattern of North American management. Arguing that North America was still probably one of the most authoritarian, managerial systems existing any where.

And in that kind of culture and context, the emphasis on management rights so seeps in everywhere, and where you have emphasis upon management rights in school boards and elsewhere as a kind of rule of thumb, then you have the kind of problem that you are referring to which is adversarialism: it is promoted from the ground up. And it really is not from a point of the view of a teacher or teacher organization that the issue arises so much as from the whole industrial culture that we are in. I do not know how you would turn that around overnight? I suspect that our party has talked as much as any party about that kind of issue. I appreciate what you are saying about adversarialism and it is a difficult issue, but it is there. I am not sure that we can avoid clearly sophisticated and advanced forms of industrial organization which, at least, rationalize those processes in some measure. So, I would just want to, I think, caution the Committee and yourself with regard to some of the other dimensions of the issue. I think they have to be very much borne in mind.

Ms. Atkins: I am aware of them, too. It is just that there is only so much that can be said in a few minutes, unfortunately.

Mr. Allen: I appreciate your coming. Thank you.

The Vice-Chairman: Mr. Lane?

Mr. Lane: Thank you, Mr. Chairman.

Ms. Atkins, I want to congratulate you on presenting your ideas to us on Bill 100. It is obvious to all of us

that it was not easy for you to do it. It does show your dedication to the welfare of the students which, in itself, is very refreshing. So I certainly want to congratulate you on your presentation.

I am only going to ask you one question. Right at the last you say you believe that replacing Bill 100 with a new piece of legislation dealing with the above issues is essential if progress is to be made in education. Okay. What should be the content of the Bill that replaces 100?

Ms. Atkins: I think there are too many -- if all of the things that I have mentioned were dealt with, I do not see how that could be done within the context of Bill 100, it would require too much tinkering, so I think that another piece of legislation, just start from scratch and maybe draw on the experience of Bill 100 and work that into a new piece of legislation.

Mr. Lane: I was around here a long time before Bill 100 was passed and there was a great pressure on the then government to bring in Bill 100 from your teachers, so I am surprised, I guess, to hear you say the things you are saying in your brief, because this was not the message we were getting at that time.

Ms. Atkins: That is was twelve years ago, thirteen, fourteen. The world has changed.

Mr. Davis: It certainly has, except Stuart Smith and the Liberal Party.

The Vice-Chairman: Mr. Bowes, did you want to comment?

Mr. Bowes: I just wanted to comment that I sat here for moral support and because I know it is a strong emotional issue. You may have missed her opening statement. Mrs. Atkins was a teacher, in the teaching profession, and left the teaching profession in 1974 and 1975 when Bill 100 came about. She left the teaching profession because of the strikes, the right to strike, because she felt it was terrible that these people could --

Ms. Atkins: My family has been teaching in Ontario for more than a hundred years; to me, the profession died with this bill came in.

Mr. Lane: You were the exception rather than the rule then, because we were certainly getting a different kind of message from the group of teachers out there.

Ms. Atkins: I referred to a student in here who was damaged by the right to strike. That happened to be a nephew of mine. He started grade nine in Thunder Bay in the

school year '74-75. The teachers went out on rotating strike there in November; they were on rotating strike until Christmas, then after Christmas they were on a full-fledged strike for 32 days. And they got a 28 per cent across-the-board pay increase out of that but, you know, it completely poisoned the atmosphere in the community, the school and all, once the children went back to school. A lot of them were in the same position as this young man, I understand. They had lost their enthusiasm for school.

Mr. Lane: Well, when a person gives up their occupation because the way they feel about something, it certainly indicates dedication.

Thank you very much

The Vice-Chairman: Mr. Callahan?

Mr. Callahan: I liked your brief by the way.

Ms. Atkins: Thanks.

Mr. Callahan: Perhaps it reiterates one of reasons, one of them anyway, that I originally got into provincial politics. I would like to ask you a question and it is a reality, is that if trustees are elected representatives, as they are... Is this your first term as a trustee?

Ms. Atkins: Yes, it is.

Mr. Callahan: Do you perceive that the trustees, when they are negotiating salaries, are more concerned about the students than they perhaps are about the question of keeping the mill rate down so as not to boost up the total city rate and, thereby, destroy, or lessen, or weaken their chances of being elected as trustees?

Ms. Atkins: I personally do not feel the remedy -- I have only negotiated once, so I am not speaking as a trustee, I do not know if it is legitimate for me to be speaking, but I do not really have the feeling that the trustees have nothing in mind but the mill rate. I think most of them, from my experience, they are really dedicated people who care about the students and the mill rate is not something that is uppermost in their minds, or even getting re-elected.

Mr. Callahan: I am not offering that as a criticism, I am just saying that the matter is more complex, it is not just a one-sided issue obviously.

Ms. Atkins: No.

Mr. Callahan: My colleague earlier had suggested something specifically in that Act to say, to put the

responsibility in a mandatory fashion on both parties to - I do not know whether you can legislate people's motives or their ideals - but to cover the situation of perhaps those people, and I am sure they are in the minority, who perhaps are more concerned about the question of their own advancement as opposed to the students'.

It certainly appears, and I think your brief addresses it, that the real issue is what is the purpose of education?

Ms. Atkins: Yes.

Mr. Callahan: I do not think that even requires an answer. It is obvious that the students' best education and best opportunity should be at the focal point, not just from the standpoint of the student, that is most important, but also from the standpoint, as you say, of Ontario, Canada, its productivity and so on.

Your colleague on the Board I think suggested something like binding arbitration. I am sure that in your brief period as a trustee you recognized that, I do not know whether it happens at your level, but certainly when I was a municipal council member, any time somebody mentioned going to binding arbitration everybody got white, shocked and their hair went white --

Ms. Atkins: I read the Matthews Report.

Mr. Callahan: -- because they were afraid that the result would be far more tramatic than negotiating perhaps a settlement themselves with the teachers.

Have you given any thought to the alternatives other than binding arbitration, or the present situation?

Ms. Atkins: Well, I know it is a problem. I read the Matthews Commission report and in there it stated that, you know, arbitrated settlements are usually, or tend to be higher than negotiated ones. I think perhaps the - I may be contradicting myself and if I am you will have to forgive me because is a complex issue and it takes a lot of thought - but perhaps the final offer selection route might be the way go, where each group has to put what he wants on the table; work out what he thinks will most likely be accepted; get it out on the table and then a third party picks one or the other. That would force people to make realistic presentations, because if it was totally out of line it could not possibly be accepted.

Mr. Callahan: Mr. Davis has just raised his hand, so I am going to anticipate his question and I am going to ask you. You are obviously as a trustee now and also in your following of the whole system over the ten years or so since, or fifteen years since 1970, there has been a

tremendous erosion of the province's contribution towards the cost of education.

I considered that in the various elections I ran in, perhaps in a machiavellian way, that this might impact on some trustees in feeling that because you have withdrawn your level of support, why should we be the whipping boys? We will negotiate, and if a strike occurs then the Province will have the tin can tied to their tail to legislate the teachers back to work.

I think you are aware that that all occurred during the last fifteen years, the reduction in the province's contribution. That must have a significant impact, I would imagine, on your negotiating, on the funds you have available to negotiate?

Ms. Atkins: I believe Mr. Bowes will answer.

The Vice-Chairman: Go ahead, Mr. Bowes.

Mr. Bowes: Mr. Bryan Downie was a fact finder before he was Chairman of the Education Relations Commission, said in a fact finder report, another public document: "The ability to pay is not in question because the trustees can just requisition the money from the municipality." And that is a public statement from Bryan Dowie as a fact finder when he was not Chairman. He said, "The ability to pay is not in question here at all" in his fact finder's report to our Board.

Mr. Callahan: I am not sure that I would necessarily concur with that statement.

Mr. Bowes: No, neither would most people, but that is another example of your fact finding.

Mr. Callahan: I think in the political realities trustees are elected representatives. If the mill rate is too high, the municipalities are getting a little wiser now, they break down their tax bill to show that they are not the boogie-man, but that "x" number is education, "x" number is cities.

Mr. Davis: Municipal background.

Mr. Callahan: So, you are really more or less exposed in the election that takes place for trustees if the rate is too high. On the other side of the coin, I suppose, is the question of what my colleague said, and I reiterate again, that perhaps there should be a more definitive statement made that the subject of this entire exercise should be the children and their education.

Ms. Atkins: That is right. That is what bothers me.

I listen to all these technicalities; and I listen to all this talk about the teachers, but what about the kids?

The school system is set up and, goodness sakes, look at the income secondary teachers have: \$45,028. Do you know that the average income for male and female university graduates in other occupations in Ontario in 1985, \$41,886 for males, \$24,280 for females. Those are the average incomes for male and female university graduates in Ontario. For high school teachers, \$45,028: that is \$4,000 above the average income for males in Ontario; \$17,500 above the average for women with the same qualifications. Look at the incomes for the rest of the taxpayers, I have those here too.

Mr. Johnson: Do you have politicians' salaries?

Ms. Atkins: Teachers' incomes are far, far above the average; far above the average for the ordinary taxpayer, and high school teachers' are well above that. College teachers, \$38,790. And teachers have twelve weeks of vacation, that is not taken into consideration. I mean, teachers have so many benefits over and above those of the average citizen. And yet, all I ever hear about is teachers' rights. Why do we have a school system? It seems to me that the school system has got so out of whack that it is now a place for adults to make a good living and be secure. The central focus of our education system seems to me is not the students any more.

Mr. Callahan: Just one final, if I could, to that. Surely you are not suggesting, though, that good teachers, again in line with the fact that it is the child and his or her education that is foremost, should not receive commensurate --

Ms. Atkins: Oh, no, I think a good teacher is worth every penny of that and more, they really are, you know. I am not saying that is high necessarily. It is not high. If the teacher is doing a good job he is earning every cent of that and more; I do not object to that at all.

My concern there was that, you know -- do know that our teachers, this is an educated guess, but I think we have the most highly paid teachers in Canada and our incomes here are about six or eight thousand dollars above those of teachers in the States. I think the only place in the world where they have higher incomes for teachers is Japan. I think the teachers' salaries are a touch higher there, but their class sizes are three times what ours are.

So, what I am saying is, our teachers are the most highly paid in the world and yet our education system is very inefficient. In West Germany they have a 10 per cent failure rate; we have a 40 per cent failure rate. There 60

per cent of their students, at least, leave school with job training; here 70 per cent of ours leave school without job training. I am not saying the incomes are high per se; I am saying they are high for what we are getting.

Mr. Callahan: Well, just to close by you giving you some final piece of food for thought to confirm that. In the United States, I know of a young lady who graduated from a Catholic university summa cum laude, applied for a teacher's job and the highest pay she was offered was \$8,000 and she is not teaching as a result of it.

Ms. Atkins: Their salaries are shocking in some places, I know, like \$16,000 in Louisiana for a teacher.

Mr. Callahan: Mind you, that was U.S.

Ms. Atkins: I am not saying they are high per se.

The Vice-Chairman: Before I go to Mr. Johnson, are you suggesting that we treat the education providers like we treated the health providers a few months ago?

Mr. Callahan: Mr. Chairman, I always that chairmen would have been non-partisan.

The Vice-Chairman: Mr. Johnson?

Mr. Johnson: I do think that the Chairman is non-partisan.

The Vice-Chairman: Thank you

Mr. Johnson: Ms. Atkins, I, too, would like to congratulate you on your brief and the amount of effort that you have put into it and your dedication.

I had the opportunity to serve for ten years as a trustee in a small local board many years before we moved into the new education system of teaching school; whether they are better or not I am not sure.

Mr. Callahan mentioned a question about school trustees, some being concerned about mill rates, some the students. I think that was the case when I served and it is the case today. You have both types of trustees: some being too concerned with the dollar and others concerned for the student. I think that is an individual's make-up.

In the days that I served, I think, the teachers deserved more than they were receiving at that time.

Ms. Atkins: Oh, absolutely.

Mr. Johnson: And maybe that is one reason they are

getting what they are getting today because it is a catch-up progress.

I feel that the teachers' salaries are fairly high, but, in a sense, does that not then encourage the better people, intelligent, the gifted people to go into the education system?

Ms. Atkins: Some, yes; others, no. I recall when I was taking -- I took several university courses at York University and most of the people in the class, during '80 and '85, most of the people in the classes were teachers and I was just appalled. They were taking three university courses in one summer session. And they had no problems with saying, "Well, this will boost me up a couple of categories." And there is no way they could have learned much from those courses, it was just a matter of money, you know. And some said that they had managed to get into teachers' training courses by making a point of getting the type of summer job that looked good on the application. I heard one of them say, "Well, you know, once you are in you are okay because the union will look after you."

There are lots of dedicated... I am not knocking the whole profession, I have seen lots and lots of really good people. There really is not a mechanism to get the poor people out. There is not a good enough mechanism to get the poor people out. And then the business of seniority. I think firing good people and giving their jobs to those who are less qualified, that is very alienating.

I read in one OISE study that public satisfaction with education is down 35 per cent, and I think a lot of it has to do with that sort of factor. I read these newspaper articles where this tremendous science teacher was fired. He has gone to the Bahamas or some place and he cannot be replaced. That science lab in the high school was put in there -- a third science lab was put into the high school and then the only teacher who was qualified to teach the students in that class was fired. I have the newspaper article in my case. There is nobody left in school capable of using that science lab. That is shocking.

Mr. Johnson: I just have one last question. I am from Wellington County and we had the teachers' strike just a few years ago, 51 days. There are many small town schools and I know many of the teachers personally, and quite frankly, I do not know any of them that like the idea of a strike.

Ms. Atkins: No.

Mr. Johnson: Most of them are very dedicated people and they are just as disturbed as the board to have to have to resort to strike action.

I would like to just ask you one question: The Board asked for a study of the effects of school strikes. The Minister of Education has, to this date, been trying to support this. In your opinion, would such an impact study be of some benefit?

Ms. Atkins: I think it would be of tremendous benefit especially if it were made known to the public that it was available. I know the ERC was, in conjunction I believe with the University Waterloo, going to do a study of the Wellington County strike, and that fell through because they could not agree on criteria and nothing has come of it. There are strikes right now in the separate school system and what better chance to, you know, push for it. I wish somebody would push for, you people would push for a study, and then you would have more to go on.

Mr. Johnson: Thank you. Thank you, Mr. Chairman.

The Vice-Chairman: Mrs. Bryden?

Ms. Bryden: Thank you, Mr. Chairman.

I would like to congratulate Ms. Atkins for appearing and taking her democratic right to tell the Committee what your views are because that is part of the process - democracy.

One question that bothered me is that you are very concerned about the dropout rate and the failure rate under our present system, but you are also concerned about the effects of when enrolment declines of having to lay off people. And the seniority thing, some well-qualified people are laid off who are particularly suited to a particular area.

The problem is: What is the other alternative? How do you pick and choose who should be laid off? I have one suggestion that instead of laying off in cases of declining enrolment that you experiment with redirecting the talents of the surplus teachers into trying to reduce that dropout rate and enrich the program. Reduce the class size because maybe that would work and maybe we would get the young people more involved with better basic training when they came out.

I do not think the comparison with Japan is too helpful because their conditions are very different from ours and they may have different reasons for staying in school than ours have, or different motivation. So, I would just like to suggest that instead of the way we are dealing with declining enrolment, we consider using the surplus teachers until they are ready to retire.

Ms. Atkins: That would be very expensive.

Ms. Bryden: Well, it might not be if you dropped your dropout rate as far as the education of this country goes, instead of them being on the streets without training.

Ms. Atkins: The individual research you referred to is Dr. Herbert Walberg. And he stresses that a lower PTR does not necessarily lead to a higher quality education. And even MacDonald, in the MacDonald Commission mentions that also. He says that it is not necessarily the relationship between PTR and the quality of the education. No matter how small the class is, if it is not a good teacher, a qualified teacher who cares for the students, then it is not going to make any difference. A good teacher could do a lot with a lot of students and a poor one cannot do much with a few.

Ms. Bryden: A smaller class, of course, may be more suited to the teenager or people with special problems, or with the reasons for dropping out, motivations to drop out. I do not think that enough studies have been done on the size of PTR and the different kinds of students.

Ms. Atkins: Well, changing the content of the general level courses is something that is called for in our society also. A lot of students drop out because they have found school to be irrelevant. They are not going to college and university and they are not getting any job skill training in high school, so they figure what is the use. And that is part of the reason. That is being dealt with OSIS and we are busy working on that, trying to make the material more relevant. That is why co-operative education is excellent where they can get out and into the labour force and learn something, and then when they come back to see what they learned and tying the two together. So, that will be a big help. Co-operative education, I think, is a tremendous thing --

Ms. Bryden: I would agree with that.

Ms. Atkins: -- for the students. And we are really pushing for that and that will be a help. And that will bring the dropout rate down. But, as I say, we really need the teachers to take a professional attitude to get the co-operative education thing working.

Ms. Bryden: Yes. We need more teachers.

Thank you, Mr. Chairman.

The Vice-Chairman: Mr. Davis?

Mr. Davis: Thank you, Mr. Chairman. Thank you, Mrs. Atkins, for coming and sharing with us.

On your last page, page 9, when you say, "Bill 100 makes no provision for fair and ethical means of dealing with surplus teachers." In reality that is correct, but it also has led to some very innovative concepts across this province to deal with surplus teachers.

Bill 100 in the Metro area finally led to the surplus pool of teachers which, at least, is a mechanism beginning to deal with that. And my colleague, Mr. Allen, and myself, in the Bill 30 debates were able to bring forth a piece of legislation which allowed for teachers to retire early. So that we opened up the lower end. To my knowledge - Mr. Allen may have more knowledge - but to my knowledge, a large number of teachers have taken that opportunity to retire early and not be penalized. So, the negotiating process has allowed that to develop.

Mr. Chairman, it was raised several times by some colleagues that there was no consideration in Bill 100 for the rights of students. I would just point out that the Minister of Education, the then Honourable Thomas Wells, in a statement to the House, said that in ensuring that this legislation is based on a second set of three "Rs" - for the 1970s - rights, reasons and responsibilities. In assuring certain rights to teachers and to school boards, we expect that the bargaining process will be carried out in a reasonable and responsible fashion by persons of good will and with constant reference to the heavy responsibilities each bears for the education of our young people in this province.

I would go so far in my twelve years as a trustee, to say that both people, both groups, who negotiated in those processes, certainly held those kinds of objectives - even though it may have led to a strike - they were the objectives they held.

I noted with interest that my colleague, Mr. Callahan, asked you a question about the intent of a trustee when they are trying to settle a contract and negotiate - which I know it is very difficult, and certainly sympathize with you in these more difficult times - suggested that the increase of the mill rate and the need to be re-elected is far more important to a trustee.

I would suggest that perhaps a response could have been forthcoming to my colleague, who was a municipal councillor, but it is probably no more effective than it is for a municipal councillor when they make a decision on the services they are providing to a community and their area of being re-elected.

Mr. Callahan: Precisely.

Mr. Davis: And when he talks about educational funding; and I think you raised a very important concern about educational funding. I think what has happened is in the razzle dazzle of the last two years, some things have gone past and only trustees and school teachers are aware of it; and that is, that in the economic difficult times up until about 1982, the provincial share of educational funding in this province never went below 50 per cent. In the last 19 months, this government, who has indicated a commitment to education and to young people in this province, has declined the provincial share by --

Mr. Callahan: I have a point of order.

Mr. Davis: -- by 4 per cent, Mr. Chairman, --

Mr. Callahan: That is not a correct statement to my knowledge. It went as low as 38 --

Mr. Davis: -- and placed it on the backs of the taxpayers and, in respect, passed it on to you to collect extra money from the taxpayers to meet the needs that you foresee in your brief.

The Vice-Chairman: Is there a question, Mr. Davis?

Mr. Davis: No, there is not, Mr. Chairman.

Mr. Callahan: I would like a clarification in supplementary to my colleague. Where did you get these figures, because they are wrong?

Mr. Davis: Do you want to see them?

Mr. Callahan: No, I --

Mr. Davis: I will be glad to get them for you, Mr. Callahan.

Mr. Callahan: No, they are wrong.

The Vice-Chairman: I will ask Mr. Pollock to ask the last question.

Mr. Pollock: I, too, want to compliment you on your brief. You say that 40 per cent of the students leave before graduation. Has there been any check ever done on those students that leave as to their standard, their quality, or their IQ tests? Were they exceptionally brilliant students that left or were they students that were possibly going to make it in the long run? Has there been any check on that?

Ms. Atkins: There has been a lot of educational research done. These students who are dropping out, some of

them certainly have limited ability; but a great many of them are perfectly capable of handling the work. A lot of the problem, you know, with the dropout rate has to do with the fact that our education system has been very academically orientated.

It has been set up for the students going on to university. And it has always been like that. Only about 30 per cent of our students go on to college and university and that percentage has not changed, and that is higher than it was. There has always been an academically orientated system and the parents are partly at fault, too. They say, well, look, we want you to go on to university, so you had better keep all our doors open. You had better take advanced level courses. And the teachers say oh, yes, university is a great thing. You had better keep the doors open, take advanced level courses.

So, the kids go into the advanced level courses and they cannot hack it. And John Fraser did a study of high school education 1979; he had a four-month leave of absence from his job. And that is an excellent study. He found that in the grade 12 math class 60 per cent of those students had begun in the advanced level courses and then they failed and they had to drop back. Well, you see, that is very damaging.

Failure is extremely damaging to anybody's ego whether he is young or old. These students, once they start feeling that they are failures, they cannot hack the advance level, then that affects their ability to achieve in any area and that is part of the problem.

That is why I say we have got to move toward co-operative education and technological studies, because many students are not just that academically oriented. And it is a good thing they are not because.... I know of a study that showed - it was on students' aspirations. And this researcher found that if all of these males, if their aspirations came true, 75 per of the males in the labour force would be in white collar jobs.

We have got to get away from that whole academic orientation and really promote technological education, co-operative education, and get the kids thinking along those lines. And educate the public, so that the parents are not saying, "Well, look, Johnny, you have got to go into the academic feild." We have to upgrade the image of technological education, co-operative education, to get more of our students going into these courses, for which they are suited both by talent and interest. We need skilled workers.

I read a statement, in Canada and the Unitied States we are not training enough skilled labour. And Walter

Light, who is the Chairman and Chief Executive of Northern Telecom, that is one of our really international companies, he said that in the long run this failure to train skilled workers could do more to undermine the North American economy than the combined effect of the interest rates, the national debt, and the activities of our foreign competitors.

So, we really need to get moving on a more practical form of education, especially in our high school system. That is why I feel so strongly about the professionalism because the teachers really have got to put their backs into it, you know, if we are going to steer the kids who are not oriented academically.

Get them into the right courses. And that means, you know, counselling in grade 7 and 8 so that once they get into high school they pick the right courses. There is so much that needs to be done and we are only going to get it if we have that professionalism. That is why I hate to see us wasting time on all of this collective bargaining. It is taking up so much time and energy. OSIS is the third attempt in 25 years to make the high school system practical. We had the Robarts system in the early '60s; we had the credit system in the late '60s and '70s; now we have got OSIS. If it fails, what else is there? This is really going to damage the credibility of the public education system if OSIS fails. Where are we going to go after that?

Mr. Pollock: What you are saying in one way flies in the face of what has been the experience with the people that are involved in small business, because they seem to indicate that somebody who gets involved in small business from the ground up, that he is more likely to make it than some whiz kids coming out of university jumping into that business and thinking well, he knows all the answers, and eventually he goes bankrupt.

Ms. Atkins: Absolutely. I am not saying we should have more kids going to college and university. I say no, we do not. We need more kids taking practical training in high school; we need to get them out into the businesses that you are talking about. Get them into an apprentice-type program, so that when they step...

In Germany 60 per cent of the kids take apprentice-type training in high school. The way they have their system set up they can only pick an occupation where there is need; for example, if the kid wants to be a watchmaker there has to be a watchmaker who wants an apprentice. They are out in the labour force for about three days a week and they are in school for the other two. When graduate, they are fully trained for the labour force and they only have about 10 per cent of their students

dropping out.

I read a study by Alberta educators who went to West Germany and they said that one thing that really struck them was the sense of purpose in the schools. There is a real sense of purpose. The kids knew they were there; they were getting something worthwhile; they knew when they got out of school there was a job waiting for them and they were there and they worked hard. So, I agree with your point. We need to get them out and let them do something practical. They are bored stiff a lot of them in school.

Mr. Pollock: Thank you

The Vice-Chairman: On that, Mrs. Atkins, thank you very much.

Ms. Atkins: All right. I feel better just having a chance to say something.

The Vice-Chairman: Mr. Bowes, we appreciate your support and we want to thank you, again, for coming in front of the Committee.

Ms. Atkins: Thanks a lot.

The Vice-Chairman: Members, can I have your attention for a few seconds?

Mr. Davis: I have a question.

The Vice-Chairman: Go ahead.

Mr. Davis: Mrs. Bryden asked for a piece of information which I thought was interesting. It was eight. Could we have also the boards that asked for it? Would it be possible to get from the ERC - and you may want to go back further, Mrs. Bryden, but I think what you are looking for is an important piece of information: How many boards asked the ERC or requested from the ERC jeopardy hearings? And I only went back to 1980, but you may want to go back to '75. Could we know what boards they were and the rationale for turning down the request. And could we also get from the ERC, Mr. Chairman, the criteria they used to determine the jeopardy hearing?

The Vice-Chairman: Mr. Nigro is taking is taking notes. What I have also is a motion by Ms. Bryden.

Ms. Bryden: Yes, Mr. Chairman. I wanted some information just on the general picture of strikes and non-strikes, so I have drafted a motion. I appreciate what you have just said; I think we do need more information on the jeopardy. And I hope that will be also part of our request to the research department.

Mr. Chairman, I wanted to move that our researcher provide Committee members with an analysis of the incidence of strikes during the period covered by the School Boards and Teachers Collective Negotiations Act, showing for each year: one, the number of strikes, total number of collective bargaining negotiations; two, regarding strikes, date, location, elementary or secondary, duration, number of boards involved, number of teachers involved, number of students affected, method of settlement, i.e. voluntary arbitration, final offer arbitration, legislative intervention or other.

I think if there is anything else that you wanted to add, this is the time to add it.

Mr. Johnson: I will second Mrs. Bryden's motion.

The Vice-Chairman: Any discussion?

All in favour? Opposed? Carried.

We will adjourn until tomorrow morning at 10:00 a.m.
The same room.

The Committee adjourned at 12:45 p.m.

STANDING COMMITTEE ON GENERAL GOVERNMENT

SCHOOL BOARDS AND TEACHERS COLLECTIVE NEGOTIATIONS ACT

THURSDAY, MARCH 26, 1987



LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday, March 26, 1987

The Committee met at 10:05 a.m. in room 228.

CONSIDERATION OF REVIEW OF THE SCHOOL BOARDS AND
TEACHERS COLLECTIVE NEGOTIATIONS ACT
(continued)

The Vice-Chairman: Good morning ladies and gentlemen. Welcome to the Government General Committee.

We will get right on with our first presenter this morning. But before I go ahead I would like to ask the members to be succinct and ask questions in the briefest way possible because we have a full morning and we cannot afford to go too much past 12 o'clock. I would like your co-operation, if it is possible.

Our first presenters are from the Durham Region Roman Catholic Separate School Board. Mr. Ivan Wallace, Trustee; Sally Longo, Trustee; and E.J. Lagroix, Director of Education.

Am I right?

Mr. Wallace: Yes, sir.

The Vice-Chairman: Welcome. When you are wish to start you may go right ahead.

Mr. Wallace: Thank you, Mr. Chairman. Mrs. Longo, Trustee Longo, will not be here today, something else came up in her life.

I am Ivan Wallace, the presenter today, and I am a trustee and currently Chairman of the teacher/board negotiation team on behalf of the trustees.

Dr. Earl Lagroix, to my left, is the Director of Education.

We have submitted our written proposals, and I don't intend to read them through. I realize that you haven't had the opportunity to see them before, but I intend to highlight each of the sections that we refer to here. In our introduction we introduce our board, and we are probably a medium sized separate school board in Ontario; sixth or seventh or eighth in terms of size.

In our introduction we point out that our board is, we feel, one of the boards in Ontario that is most comfortable

with labour negotiations. We are headquartered in Oshawa, and many of our trustees and teachers and staff grew up in an industrial town with General Motors and UAW, now it is CAW. We are very comfortable with labour management negotiations and the whole procedure. We see ourselves as a very moderate board, we are not radical in any way.

In our first clause we discuss the right to strike and lock-out, and we believe, and even firmly believe, that the teachers should continue to enjoy the right to strike. We see that strike and lock-out is perhaps not a preferred way to conclude a set of negotiations, there does need to be some concluding force on the negotiators for the two parties. If the two sets of negotiators are unable to find the contract, there needs to be some way to make them find the contract that is always contained within a set of negotiations. We think that if both parties are responsible, then the right to strike and lock-out should be continued. We are concerned about the lengths of strikes, and we will discuss that in a moment.

We also include on page 3 a synopsis of some of the strikes in the education system referring to the length of time. We are concerned about the length of time under this act of strikes in the education system, and we believe that it is a direct result, however, of protracted negotiations themselves; a certain level of acrimony will have developed in the negotiations by the time we reach a strike situation or a potential strike situation; and we believe that the length of strikes, if they are to occur in the future, could be shortened for the benefit of all if we can find a way to shorten negotiations.

Under work-to-rule, our clause 2, we are saying there, and in the strongest possible language, that we believe that the work-to-rule sanction that is presently available to the teaching bodies should be eliminated. They should not have the right to work-to-rule. There are four principal parties to a set of negotiations: The teachers, the trustees, the parents and the students. The body that has the least power; that is, the students, are the ones that are most seriously and adversely affected under a work-to-rule situation. It provides little pressure on the trustees immediately to find a settlement. We do not see that it provides the normal pressures on the teacher body to find the settlement, and we are concerned that a work-to-rule only adversely affects the students and they don't have much of a say in the negotiations.

Under protracted negotiations, page 4, our clause 3, we discuss there that under the Ontario Labour Relations Act most contracts are negotiated in a short period of time, one to three months and certainly all of them, almost, in less than nine months; whereas, trustee/teacher negotiations, the normal is 12, 14, 16 and 18 months. Part of the reasons for

that are the incredible number of steps that are available under the present bill and must go through with fact finding and mediation and on and on, and there is no impetus in the present legislation for short-term negotiations and a ready solution.

I have negotiated on behalf of the board on many, many occasions. I have been a trustee since 1964, and one of the things that I do on the Board, from time to time, is be one of the trustee negotiators. It has always been my experience that there is an awful lot more action in negotiations in the last 12 hours than in the previous 12 months. We feel that there are ways to accomplish shorter negotiation.

Fact finding, page 4, our clause 4. We believe that fact finding should be abolished entirely. I was certainly one of those that felt that prior to Bill 100 that if we had a ready avenue for the information that was contained in the negotiations to become available to our parents that it would be a panacea and it would solve all of problems of all of the boards in Ontario as soon as they found out what was going on here. It has been our belief since then that not only were the people that wrote fact finding in, but I personally was in great error at the time.

Fact finding almost always introduces a delay of approximately two months in negotiations. We are well aware that under Bill 100 there is no obligation to stop negotiations once the fact finding process kicks in. However, from a practical standpoint, almost all sets of negotiations cease immediately and our energies are directed to the preparation of the material to submit to the fact finder, then we wait for the fact finder's report because we certainly do not want to negotiate away something that he is going to recommend that you were right on, so we sit and wait for two months.

It also introduces a certain level of polarization on the part of the two negotiators, teams, because human nature being what it is, most of us look at the recommendations that are beneficial to us and say, ah ha, you see, we were right all along. And both sides are able to do that and it produces very little. We believe that fact finding should be abolished entirely from any new legislation.

Mediation, our clause 5. We have been involved in mediation. The level of success of mediation frequently hinges upon the expertise of the mediator, himself or herself, as well as the level of successful negotiations up to the time of mediation. If the contract is still a long distance away, then the mediator may not be of great benefit; if the number of clauses are down and limited in their nature, then mediation can be a very successful routine. We believe so strongly in mediation that we are suggesting that it should become a compulsory step in the

process as an alternative to the compulsory fact finder.

We believe under our clause that if bargaining is not completed by a certain date, and we are suggesting October the 15th, then the teachers would have to accept the board's last offer or strike. We see as a logical conclusion for negotiations will be October the 15th and if they start by some time in February. There is no statutory requirement now to complete bargaining; we are suggesting that there ought to be one. There is a contract in every set of negotiations, it is there for the negotiators to find, and six or eight months is clearly long enough for us to discover that spot that we all ought to be at. We think that by having a deadline, we are suggesting October the 15th, that it puts the appropriate pressures on the negotiators on both sides to do their job.

Clause 6 on page 6 is, we believe, an important recommendation of ours and, that is, it speaks to the membership of principals and vice-principals. In our case, the OECTA or AFO or in any of the federations. We find out of curiosity as residents, long time residents of Oshawa, and I am sure other industrial towns would be familiar with the procedure, and the curiosity we find is that the managers and the managed belong to the same bargaining unit and the same contract.

We are familiar with the process in General Motors and most other plants that when a person gets promoted to a foreman situation then he automatically leaves the union and becomes a part of another bargaining unit. It is implicit in our recommendation that they be removed not only for bargaining purposes, but they be removed from membership in the federations entirely. We are not opposed, and we would even be supportive of the principals and vice-principals being members of an appropriate bargaining unit rather than the one that they are now. What the appropriate bargaining unit would mean it is not clear in my mind at the present time. We don't know whether that means that they would be welcomed into the Superintendents Association or whether they would have an association of their own, but we would leave that up to others to decide. But we would be supportive of such a move.

Our clause 7, voluntary arbitration and final offer selection. Voluntary arbitration is acceptable to us. It is not one that we would necessarily see as a successful conclusion to negotiations. I personally would prefer to have negotiations concluded at the negotiating table between the parties themselves. However, there are times that there needs to be some other mechanism to bring it to a conclusion. Voluntary arbitration seems to us to be the route. We are opposed to final offer selection in its entirety, and we would urge that it be deleted from the act. It is simply too dramatic and a dangerous gamble for both

parties to take, and we don't feel that final offer selection has been successfully used. It hasn't been used in the 84/85 time, and my board in particular urges that it be eliminated entirely.

Our clause 8, Education Relations Commission. We believe that the ERC has done an outstanding job in the publication of reliable and non-partisan bargaining data. We do understand that there needs to be a supervising body of some type to hire mediators to supervise the negotiation process and to maintain the new act whenever it is in place. We are concerned, however, of the membership of the present commission and the handling of complaints in good faith, and the determining of the appropriate bargaining units and bargaining agents. Many parties in Ontario have lost confidence in the ERC and in its rulings.

We would respectfully suggest that the cure to today's level of dissatisfaction would result that if the individuals that were appointed to the commission would have a broader range in labour relations experience and not just experience in the education sector, it would be very helpful to us.

Our page 7, we have the 11 recommendations, and I would like to take the opportunity to read them out because they are the highlights of our submission.

The first one is that we believe very strongly in continuing the right to strike. We are also repressing, and I think I skimmed over it very quickly before, that the board should have the equal right to lock-out as the teachers have in a strike situation. We wish that you would abolish the work-to-rule; we wish that you would abolish fact finding; we wish that you would make mediation compulsory. It is a great desire on our part to have improved training for mediators, although I am sure that cannot be incorporated in any legislation. We would ask that you require bargaining to be completed by a fixed date. We are very sincere when we ask for the removal of principals and vice-principals from the bargaining unit where it should be viewed that that is not union bashing on our part, we just think it would work an awful lot better for all the people involved. We ask that the continuation of voluntary arbitration; the abolishment of final offer selection; and, of course, the appointment of more experienced labour relation experts to the ERC.

We include table 10 as our only exhibit, Exhibit A, which simply highlights under the Ontario Labour Relations Act most negotiations are concluded satisfactorily in a relatively short period of time, as opposed to our negotiations. Thank you.

The Vice-Chairman: Thank you very much, Mr. Wallace.

We certainly appreciate your brief and your straight to the point remarks. If you wish, we will have some questions.

Mr. Wallace: Yes, sir. Thank you.

The Vice-Chairman: We will start with Mr. Pollock.

Mr. Pollock: In your comment at the start that you agreed with the teachers' right to strike, and then you come along to the fact that you want to abolish work-to-rule.

Now, I am not that familiar with union contracts. Does work-to-rule, is that written right into union contracts? How do you give them a right to strike and then take away a portion of what is in a contract? That is my question. Work-to-rule, is that written right into the union contract?

Mr. Wallace: No, it isn't. I don't believe that it ever is. We have just experienced in the newspapers a group of teachers who were working to rule in York region, I believe, and what it does is that it -- well, we all know what it does, it takes away from the students the extra curricular activities and counselling outside the normal school hours and stuff.

I do not believe that it is ensconced in the present bill that they have the right, but we believe that the proclamation of doing such a thing and then proceeding for a number of days and weeks to do this - it is an accepted practice and we think it should be addressed in the new legislation.

Mr. Pollock: I agree with your comments that they should not be allowed to work-to-rule, because I think that in the long run it teaches the students to be rather rebellious, you know, if they see their teachers being rebellious and not doing their job, why then the student is only going to follow suit somewhere down the line.

Mr. Wallace: Work-to-rule seems to be sort of a half strike. We believe that you either do it or do not do it, get on with it or --

Mr. Pollock: You either go on strike or you do not.

Mr. Wallace: -- not. We are not advocating strike; we are just saying that the right should be there.

Mr. Pollock: I compliment you on your comments about changing your position on a fact finding person because, after all, not too many come in here and admit that they had one position at one particular time and reversed it. You are to be commended for that.

Mr. Wallace: I am over fifty now and I have changed a couple of views in my lifetime.

The Vice-Chairman: Mr. Reycraft has a supplementary.

Mr. Reycraft: Thank you, Mr. Chairman.

Mr. Pollock, if I may, it is a supplementary to your first question about doing away with work-to-rule. What you are saying then: Is it realistic to assume that we could somehow require teachers to what they do not have either a statutory or contractual obligation to do? Isn't that what you are saying when you say do away with work-to-rule?

Mr. Wallace: It is possible that some of our views are unrealistic and that may be one of them. However, that doesn't mean that by some process that work-to-rule could be considered as bad form. I am not clear because I am not a legislator, I am just a trustee. I do believe that there must be a mechanism through the federation and through ERC and through this House that a mechanism can be found that federations would not sanction work-to-rule and, therefore, they would not occur. It is not clear to me how that would occur, it can be a guideline of the ERC and of federations.

Mr. Reycraft: I guess I can see eliminating it as a recognized sanction, but I really cannot see any real way in which it could be eliminated.

Mr. Pollock: If it was written right in the bill, would that not --

The Vice-Chairman: It is already, Mr. Pollock, in the act.

Mr. Reycraft: You cannot put something in the law that says somebody has to do what neither the law nor their contract requires them to do, and that is what work-to-rule is really.

Thank you.

The Vice-Chairman: Mr. Callahan?

Mr. Callahan: I would like to clarify a couple of areas. First of all, I heard some astounding information on the radio last night whereby former Premier Frank Miller indicated that in 1970 and '80 the provincial government secretly reduced its contributions to the educational costs. I was really astounded because Mr. Davis yesterday was suggesting that -- I think he was suggesting, anyway -- that that was not correct.

I would like to ask you this question. I put this

simply as a hypothesis because I may be quite wrong. In a trustee/teacher relationship, by keeping it in the same sense as the business world, the right to strike and so on, they really are different factors because you, as a trustee, or a politician, when you are considering your budgets, quite obviously you have to consider them in the light of keeping the mill rate down to such a degree that it will not impact on your re-election.

In addition to that, I suppose with a separate board, at least before Bill 30, if you wanted to compete effectively for industrial and commercial portions of the assessment you have to try and at least stay equal to or below the public school mill rate.

Is that a fair comment up to that point?

Mr. Wallace: Yes, it is.

Mr. Callahan: All right.

The teachers themselves -- it is interesting, I talked to a lot of the teachers who have been terribly embarrassed; these are teachers who are good teachers and professionals who are really concerned about their students, which in the main is the majority of them -- about going on strike because of the impact it has on their professional and career-related concern about kids.

With both of those things being in play, does it really provide for an analogy to the typical collective bargaining process that we have out in the commercial world where the only person that suffers in a real sense, if they suffer at all, is the employer, and he probably passes it on to the people who are purchasing the product. In a very real sense in the educational field the people who suffer are the children.

I think you would agree with that as well?

Mr. Wallace: That is correct.

Mr. Callahan: It seems to me that yesterday there was a suggestion by my colleague that although the act is geared towards the children, and we were assured that when the trustees are deciding on terms of the contract, be they monetary or whatever, and when the teachers are deciding on it, that the children's interest is really in the forefront. There is nothing in the act that specifically says that.

I thought about it overnight, and it seems to me that in every other process in the law when you are talking about children -- I am talking about things like custody or access -- the law has always taken the position that the judge is the pater patrion of young people and, therefore,

the issue to be determined is what is in the best interest of the child as opposed to what is in the best interest of either of the competing parties.

Do you think that if that was specifically put in the act as a principle, that it should be the guiding principle of both sides in terms of their bargaining? Even though we are told that this is what goes on, do you think that that would have any effect or, perhaps, bring this type of labour negotiation to a situation where it could apply to a teacher and trustee relationship?

Mr. Wallace: No and yes all at the same time. I have been hanging around with trustees now in excess of 20 years, and I, and other trustees, repeatedly say that the reason that we do this; that is, be a trustee, is for the good of the children. I honestly do believe that the majority of us trustees firmly believe that. The teachers say the same things and I believe that they firmly believe that, at least the majority of them.

Most people in the education business -- while we may be well paid or not, it just depends on your perspective of the day -- we honestly all believe that we are doing this for the benefit of the children in the Province of Ontario. And I am not sure that having that written into this type of legislation would alter our attitudes any, or that it would be productive in the pursuit of the contract. It is the goal in that legislation and in the set of negotiations; the goal is to find "the" contract that is agreeable to the negotiators. It may or may not be terribly acceptable to the balance of the board, or to the teacher body in general, or to association groups, but there is somewhere in there where there is a contract.

I am not sure that legislation principles would say what you have just said, that this whole purpose of this legislation is for the benefit of children in the Province of Ontario. I am not sure that that would be -- it wouldn't be bad, but I am not sure that it would be terribly productive in the negotiating process.

Mr. Callahan: I come from a municipal background, and I am sure anybody who was a member of a municipal council when they were negotiating budgets, usually what happened was the budget was set first, the mill rate, and then all of the budgets were scaled down to meet that objective, particularly in election years. That sounds very machiavellian, but I think that anyone who was being purest would agree that that is many times how it happened.

I recognize that the trustees are in a different situation and obviously have to look at different concerns. They should be looking at the interests of the child. Let's say that that is not in the act and you go to a mediator or

you go to arbitration, and it just turns out that the mill rate is significant in terms of its contribution to the overall tax dollar of the city, and that is one of the concerns. And that is a legitimate concern of the trustees. You have to look after the public dollar just as much as municipal councillors and as much as we do.

If the overriding provision was a mandatory provision, such as it is -- as I have said, in the courts where a child's interest is concerned, that the child is the central issue, that the best interest of the child is the most significant feature -- is that not sort of a half way measure between denying them the right to strike, which I don't think would be appropriate, and perhaps one of the other alternatives, as one group suggested, take away the right to strike and make it binding arbitration. I am not sure that that is a good route either, judging from some of the arbitrational boards.

If you as a trustee were negotiating salary, where you were bargaining with the teachers for a salary and the teachers, equally, were bargaining with you, and they had that specifically in the act saying that that is a mandatory item, that is an item that the mediator would have to look at and if any other concerns arose that were not in tune with that they would be rejected because they would be contrary to the act; or the alternative, when it went to the arbitration that any other evidence would be irrelevant. Would you not see that as a...

Mr. Wallace: Unless I misunderstand your concept, I would say that if we had before us (when we are talking about the dollar part) that the trustees would say -- if that was ensconced in the legislation that this whole process was for the benefit of the child -- that I would say, that is, the the trustees would say, that the reason that we are only offering you 3 per cent is to keep the mill rate down and that will benefit the children because their parents would send this child to this school as opposed to some other school. The teachers would say that the reason that we need to have the 9 per cent is for --

Mr. Callahan: Better teacher/pupil relationship.

Mr. Wallace: -- the benefit of the students, so that we could hire better teachers and attract different teachers with different skills to your board; therefore, it would benefit the children.

So, again, I just say that I do believe that both parties hold that as one of the principles for their activities in the first place. Including it in the act would be fine, but I am not sure that it would produce great benefit to the negotiating process. I am not adverse to having such a principle included in the legislation, I am

just not convinced this morning that it would be a great benefit to the two parties that are doing the negotiating.

Mr. Callahan: You agree with me, though, that there is an element, obviously there has to be an element in the negotiations, certainly on your side as trustees, that you want to not impact on the mill rate too significantly?

Mr. Wallace: That is true, and it has been my experience that when our mill rate gets too high they cut my salary and cure the problem.

The Vice-Chairman: Mrs. Bryden?

Ms. Bryden: Thank you, Mr. Chairman.

I would like to say how much we appreciate the Durham Board for bringing a brief here, and particularly in view of your particular experience of living in a community that has had collective bargaining as part of its bloodstream for quite a long time, in the industrial area.

I recognize that you do accept the right to strike. But if the objective of the legislation is to minimize strikes and produce settlements, if they take away the work-to-rule possibility then you may have more longer strikes - may you not? - because the work-to-rule could be sort of a warning sign that negotiations are coming to possibly an impasse and that both sides should sit down and try and come to an agreement.

I agree that it probably most seriously hurts students, but it does hurt teachers who want to, as we know, give that extra time after class or go that extra mile in doing their professional job. It also hurts parents who are concerned about their children's future, and whether they are getting the kind of education that they are paying for; and it concerns the community, because the kids may not be occupied after school and there may be problems in a community as well as the fact that the community is not getting the same quality of education.

There is some virtue in the students being aware that collective bargaining hurts various people if it comes to an impasse and a strike. Maybe that is a plus that is not looked at as much, that the students are not aware that bargaining is going on if it is all behind closed doors. They may not realize what collective bargaining means in the educational process and, if they come from a city like Oshawa, they may be much better educated but in other cities and towns they may not be.

So do you not think that work-to-rule should be retained in order to stave off long strikes?

Mr. Wallace: No, because I believe that the purpose of the act is to end the sanctions that are allowed within it. All are designed specifically to either assist or put pressure on the two teams of negotiators to find the contract that is acceptable to them. I do not believe, as a trustee, I do not believe that a work-to-rule edict that is functioning in my school system would necessarily put the kinds of pressure on the trustee negotiators that the teachers anticipate that it would. It is not the kind of pressure that a strike would put on the negotiators.

When a strike occurs, and I have had the experience of one, and I was one of the negotiators during the strike and, of course, that suggested there was a failure on the part of the two teams of negotiators to find the satisfactory conclusion to the negotiations. Incredible pressure is brought immediately upon the trustees by the parents. The phone just rings all day and all night, and the pressure comes from not only off the phone but from your own family - whether or not you have children in the system, there is a lot of pressure involved, would you please do whatever is necessary to stop that phone from ringing, and that includes my spouse.

So there is incredible pressure on the trustee to find a settlement, and I believe there is an equal pressure on the teachers, both economic and philosophical, to force their negotiators to move along and find the contract. The work-to-rule just does not do that. You can have a nice work-to-rule campaign for three or four weeks and it eliminates the basketball games and it eliminates the after hours counselling, but it is not evident to the trustees, and I do not believe that it is so evident to the teacher negotiators. When I say the trustees, I mean the ones who are at negotiations.

We have an eighteen member board and there are three of us on negotiations. The other fifteen trustees are out to lunch as far as the whole procedure is concerned as well. We tell them what we think they need to know and then they are part of the pressure body on us, on the negotiators. All of these sanctions ought to be designed to force the negotiators to find the contract, and I simply do not believe that work-to-rule does that. It has detriment to the students and to no one else, really.

Our goal, as we discussed here a moment ago, is to help the students, not to hurt them - at least that ought to be our goal. And work-to-rule hurts the student, and it doesn't put the kinds of pressure on the negotiating teams that I think it ought to as a sanction.

Ms. Bryden: Yesterday we asked our researcher to give us figures on the number of strikes and the number of negotiations without strikes by the board for the last ten

years, and perhaps we should also ask him to give us the number of strikes where work-to-rule was invoked and then how long the strike was after that and how long the work-to-rule was. I think that would be useful if it is possible to get that sort of figure, then we might have a better idea.

I appreciate what you say, Mr. Wallace, but there are sort of two sides to it as to whether it really prevents strikes or whether it, as you say, makes it more difficult to get a settlement. With regard to the settlement, you want to speed up the process. But I wasn't clear what happens if by October 15th there is no settlement. Is it then compulsory arbitration?

Mr. Wallace: There is an assumption here that some of the questions that we have had left open would be answered by others, but the conclusion of negotiations by October the 15th would mean the closing of the system if there was not a contract. They would have to be built in a certain back-up time, the last offer of the board presented to the teachers and the strike vote, supervised strike vote, et cetera, et cetera. I see it as if we still do not have a contract on October the 15th then the system is shut down until such a contract is prepared.

Ms. Bryden: It would have to be written into the legislation then what the next steps are?

Mr. Wallace: Yes.

Ms. Bryden: You do not have a specific proposal?

Mr. Wallace: No, we do not, but that is one of the alternatives that we considered which we did not put in writing. But if you are going to legislate an end to the negotiations, then there has to be a process to take over from there; and shutting down our system on October the 15th because there was no contract would certainly -- a legislative shutdown of our system would certainly put a lot of pressure on the two parties to find a contract.

Ms. Bryden: As you know, even legislation denying strikes does not prevent strikes?

Mr. Wallace: I am aware of that. But speeding tickets are also a problem for some of us.

Ms. Bryden: Just one final comment. You mention that the Educational Resources Commission should have a broader scope in its appointments, people with more knowledge of labour relations. I certainly support that.

There was also a request from earlier delegations that their resources should be considerably improved so that they

can act faster on situations that come before them and requests for service. Do you people feel that they are not acting fast enough?

Mr. Wallace: Our direct contact with ERC in recent history was limited to a charge on bargaining, lack of bargaining in good faith brought against our Board. It would not be unfair to say that there was a very lengthy process that took place to which there was no conclusion. The charge was withdrawn but it did go over a long period of time, and it was the damaging sword hanging over the negotiations.

During the next couple months of negotiations we had this lack of bargaining in good faith charge against our board. Some of our energies were directed towards the defence of such a charge and the investigation appearing before the investigator, and all of those things. Had the thing been brought to a quicker conclusion, then it would have been helpful to the negotiations because there is a certain amount of bad feelings that exists on a personal level between the individuals who are meeting them on a regular basis because, you son of a gun, you have charged me with lack of bargaining in good faith, and now I have to direct my attention to that as well as the problem that is before us. So if the ERC was quicker in their responses to some of these things I am sure it would be helpful to us all.

Ms. Bryden: Thank you.

The Vice-Chairman: Mr. Johnson?

Mr. Johnson: Thank you, Mr. Chairman.

Mr. Wallace, on page 3 you mentioned the Wellington strike being 50 days or I think it was 51 days. Wellington is my riding and I was involved in that.

I would like to just comment about your protracted negotiations. During that strike in Wellington, the Teachers Federation sent out a newsletter dated September the 25th. The strike started September the 16th and went into December and was only ended by legislation.

Mr. Wallace: Yes.

Mr. Johnson: On September the 25th the Teachers Federation sent out a notice saying:

"It seems that face to face negotiation between the teachers and the board is the only way to end this strike. Professional negotiator, Michael McCleary, has been working on the board's behalf for the past 21 months. If nothing can be accomplished in 21 months of talks with Mr. McCleary on the job it is time for

the teachers and the trustees to negotiate without him."

Are there occasions when personality clashes occur that some people, for whatever reason, just haven't the ability to overcome a personality problem that does cause delay?

Mr. Wallace: Yes. Our board is a board that while we use the services of a consultant to assist the trustees in negotiations, the trustees are a part of the negotiating process, which may be a little differently than what you just read there. I sit at the table and I nod my head or shake it, as the case may be, and we do have face-to-face negotiations between the trustees and the teachers.

That doesn't eliminate the personality conflicts that might arise, it may even heighten the opportunity for that, but it is true that at some other negotiations in my lifetime, and I have participated in a number of them, that calm reflection afterwards on some of the things that cause delay or a great moment at the time was as a result of personality conflicts between myself and one of the teachers or between some other trustee one of the teachers. There is no way to eliminate that because an unintended slur given at this moment towards yourself may result in that very thing from occurring. There is no way that legislation can prevent that. It is just "thems the breaks of the game".

I don't agree with the process that you had outlined where the trustees had no direct personal involvement apparently in the negotiation process. Our board firmly believes that the trustees are responsible and, therefore, they go out and do the job; that is, that I am one of the negotiators and Mrs. Langroix, who is not here this morning, we form a committee of three or four people of trustees, we seek advice from our staff, whatever staff it is, and they provide us back-up, but we do the negotiating.

Mr. Johnson: I think the question that I would like to ask, Mr. Wallace, is I have been involved in sales and if you cannot make a sale in a reasonable period of time then it is time that you get someone else. If a negotiator cannot solve a problem in 21 months, would the board not consider that possibly they should be replaced?

Mr. Wallace: Of course, human nature being what it is, if I was, as I am the the chief negotiator, if after 21 months the board said to me, "Well, Wallace, it must be your fault." I would say it is his. It is almost guaranteed that I would defend my position.

I understand what you are saying very well, but when you are involved in what I would call a "hired gun" and he is not doing the job for you, then get him out of town and

get a new one. My experience has always been that the negotiations are done by the trustee with whatever support that he could obtain. So I agree exactly that if the hired professional negotiator is not doing the job, if he is clearly not doing the job after 21 months, then there must have been some break down in the process of negotiations going on for 21 months; however, of course, it is never assigned one hundred per cent of fault. It is like a break-up of a marriage, usually one of the parties is not one hundred per cent at fault and the other one some sort of the same.

Mr. Johnson: I do agree with that, and there is always two sides to every issue. I also feel that if the prime concern is the children, the students, then I think we will have to take a harder look at some of the people handling the negotiations and maybe take a tougher approach in how we treat them. If they are not doing the job then I get the feeling that maybe they should be moved on.

Mr. Wallace: Hopefully our recommendation that a time limit to negotiations would satisfy, if that was ensconced in legislation, satisfy some of the concerns that you mentioned, sir.

Mr. Johnson: In fact finding, you are very strongly in support of doing away with it?

Mr. Wallace: Absolutely.

Mr. Johnson: And you would bring mediation in under the --

Mr. Wallace: Compulsory mediation as a time line that after so many weeks or months of negotiations that the process - that a mediator be applied to the negotiations by law.

Mr. Johnson: One of the former presentations we had suggested that a mediator could be brought in at the request of either party earlier in the spring.

Mr. Wallace: Yes, we would agree to that. As well as the legislative time period for it, we would agree a mediator could be applied by wishes of either party.

Mr. Johnson: My last question --

The Vice-Chairman: Just a minute Mr. Johnson. Mr. Reycraft has a supplementary.

Mr. Reycraft: Thank you, Mr. Chairman.

It is a supplementary to Mr. Wallace's comment about putting a limit on the length of negotiations. Do you have

any suggestions to put before us about when negotiations should start? The only reference I can find in your brief to time frame is October 15th when you suggest that they should that they should conclude at that time.

Mr. Wallace: I guess that is an oversight on our part. We are satisfied with the present time, the start up time.

Mr. Reycraft: January.

Mr. Wallace: Yes. We are quite satisfied with that.

Mr. Reycraft: Thank you.

The Vice-Chairman: Mr. Allen has a supplementary.

Mr. Allen: Mr. Wallace, I wanted to just ask you a question about the implications of putting a deadline in the negotiations. The way you phrase it is you would either have to accept the board's last offer or strike. Presumably, legislation that drew that kind of a deadline would not in fact cause a strike, it would enforce a provincial walk-out. It would in fact remove responsibility from both parties to negotiation for the consequences, in effect, and the province will simply shut down the system and say okay, bring it together again in some fashion.

Can you see that maybe working?

Mr. Wallace: Yes. Because the result is that --

Mr. Allen: Can you see us doing it?

Mr. Wallace: I wouldn't recommend it. If you think that you could, go right ahead and do it.

I return to a couple of comments I made in the past. The whole purpose of this legislation -- not the whole purpose, but one of the purpose of the legislation and the whole purpose of the sanction -- is to bring reality to the negotiators. Sometimes negotiations just hiccup along in a fine fashion because we are all enjoying the process, sometimes get wrapped in the process as individuals, that is; it is swell to go down to the hotel, have nice meal and sit for a couple of hours and chat away with these people.

What we have to do is find the means to make me negotiate and conclude the negotiations, and time lines and sanctions are apparently -- certainly in my suggestion -- is the way to make me be more realistic. If it is my fault that negotiations are not going rapidly that they just hiccupping along.

We look at other examples, and I keep referring to

General Motors, and I am certainly not an expert in General Motors or I do not work there, but all of my family and all of my wife's family do and we are very familiar subjectively with the process. They seem to have some sort of process that they say two months from tomorrow is the conclusion of the contract and that is the conclusion of the negotiations. They set up a time schedule and they find that they meet that schedule or go on strike, and it is a known factor before negotiations start up August the 15th, if that would be the date, is the day that we either have the contract or we have a strike. It is a model that has worked very well in industry since 1937 in Oshawa with some spectacular failures, of course, and it is a model that we look at with great comfort.

Mr. Allen: You really cannot conceive of the province shutting down a school system where the parties have not concluded a contract?

Mr. Wallace: Not by some letter arriving from the Premier's office saying you are out of business until you settle this contract, but if the legislation says that the system --

Mr. Allen: If such a letter does not arrive, then what? I mean, then you really are in sort of limbo and nothing is really settled. I mean, your final date is not a final date with any apocalyptic consequences that --

Mr. Wallace: It is possible to find legislation, I presume, that would do that; withdrawal of grants from the school board would certainly -- if you do not shut your system down and find a conclusion to your negotiations it would be a nice pressure point.

Mr. Allen: I am not sure, the private sector/public sector model does not quite come together. It is an interesting idea, but, Mr. Chairman, I will leave it.

The Vice-Chairman: Mr. Johnson, do you still have a question?

Mr. Johnson: I would like to refer to the Education Relations Commission. In the Wellington strike, there was a good deal of concern about the length of time, naturally. One of the problems that I have, it is my understanding at the present time that there is no process for requesting jeopardy hearings if the Education Relations Commission decide there is no need for a hearing.

Mr. Wallace: You catch me at a point that I -- because our only strike was nine days and it was 1976, and at that time we were not operating secondary schools. Jeopardy is not normally considered to be a factor in elementary schools to the degree they are in secondary

schools. My experience with jeopardy, the invoking of jeopardy, is so limited that it comes from the newspapers and so on. I am not really not in a position to --

Mr. Johnson: There is another board I think making presentation today, I could refer that to them.

Mr. Wallace: Yes. .

Mr. Johnson: Thank you, Mr. Chairman.

The Vice-Chairman: Mr. Lane, one short question, please.

Mr. Lane: Thank you, Mr. Chairman.

Mr. Wallace, I certainly have to agree with what you said about work-to-rule. I do not know whether we can legally get rid or not, but obviously it is detrimental to the students.

Mr. Wallace: Thank you.

Mr. Lane: On page 4 you say: "The parties have an incredible number of procedures to conclude before they approach the 'hour of decision'." I think the "hour of decision" is what we are all looking for, and apart from getting rid of the fact finders, you really have not said very much about what you have to go through, the incredible number of procedures.

Are you frustrated with the legislation? Is there some way that it could be simplified and the "hour of decision" could be come about much quicker if it was more simple or plain?

Mr. Wallace: Yes. The most significant one, we believe -- well, there are two. One of them is fact finding kicks in in September unless you able to persuade ERC that it is not necessary because you almost have a contract, so you can sweet talk the ERC into not appointing a fact finder to our negotiations for a period of about three, four, six, eight weeks; a nice long delay. And then you stop negotiating.

So with the present system of the fact finder, we start negotiations and move along through the spring. Then, of course, we always adjourn for July and August for reasons that have never been clear to me personally, because I work in July and August the same as lots of other people, but not as a trustee and not as a negotiator. We just should get this wound up before the fact finder gets appointed would seem to be an attitude that is prevalent in some negotiations; that is some time in September or October or even on into the November. And then you stop for a month or

two while you dust around with him. You suddenly find that a whole year had lapsed since you began negotiations, and that is our concern.

We think two things, maybe three. The elimination of the fact finder would speed up the process dramatically; the imposition of compulsory mediator, I would suggest at a period around April to assist the parties; and the imposition of a time calculated, October the 15th, will shorten up negotiations and, presumably, get the job done.

There is no reason that you could imagine, that I could imagine, why negotiations should normally take 13 months and go 21 months. My goodness, when we were dealing with one-year contracts, as we have been doing ever since early in the seventies when inflation took off -- we now have a two-year contract -- we were in the curious position of having a legislated beginning to the new set of negotiations prior to concluding the old set of negotiations.

In theory and in practice we had four teams functioning at the same time: we were still negotiating last year's contract, you might say last year's contract, and these guys over here were starting up a legislated beginning of the next contract when we had not even finished this one yet. That is not a silly supposition that it could happen, it has happened; and so we think that there needs to be a shortening of the process, and our recommendations, we hope, would lead to that.

Mr. Lane: The only other question I would ask, in reading your brief you seem to be coming down on both sides of the fence about the principals and vice-principals being involved, and yet in your recommendations you take the principals and vice-principals out of the bargaining unit; so you must have agonized to get over that and yet eventually come down with that decision. That seems to be the feeling of a good many of the groups coming before us.

In reading your brief I seem to think that you were saying - well, could it be either way - and yet in your recommendations you are taking them out.

Mr. Wallace: I hope what you said was a misunderstanding on your part and not on mine, although I am always prone to that sort of thing. In the preparation of our brief on principals and vice-principals, we didn't feel that we were on both sides at all, or that we were hesitant at all.

We think that they have the right to bargain, that is clear, and that is in our concluding sentence. But I had hoped that we were very clear, that we feel that they should be eliminated from their federations -- they are union

now -- so that they are more managers than managed. If what we have written is not that clear then I apologize, but we feel very strong that they should be eliminated from the federations at this time.

Mr. Lane: It was probably just my interpretation.

Thank you very much.

Mr. Wallace: It may have been my wording as well.

The Vice-Chairman: Thank you, Mr. Lane.

Mr. Wallace, I appreciate your brief very much. It was very interesting and brought on a lot of questions, took up a lot of time. I want to thank you very much for coming, once again.

Mr. Wallace: Thank you, Mr. Chairman, and Members. Thank you very much.

The Vice-Chairman: You are welcome.

Our next presenters are from the Scarborough Board of Education. Mr. David Owen, Chairman of the Board; and C. R. Mason, Superintendent of Personnel.

Welcome Mr. Owen.

Mr. Owen: Thank you.

The Vice-Chairman: Please start whenever you are ready.

Mr. Owen: Well, I had hoped that I could get you back on time by endorsing the Durham Region Separate School Board's recommendations in their entirety. That is the way it started out. There are some differences of opinion on some items, so I am afraid I am going to have to go ahead.

The Board of Education for the City of Scarborough considers the act to be basically sound. We are all working towards a reduced period of time for negotiations. In spite of everybody's best intentions, the act in its present form works against that objective.

I will refer you to the Provincial Review Report, Volume II, No. 3, 1978/79. The relevant passage that highlights the problem is included in our brief, and go on to make the point that in the intervening years since '78-79 the situation has not improved, the problems outlined in the report have continued. I would suggest to you that no action was taken and we do hope that this is not another such exercise that we are engaged in now.

The effect of strikes and lock-outs on the education process. It is our opinion that a strike or lock-out does have a long lasting effect on students, in particular, and on the educational process in general. Such effects are difficult to measure in definitive terms but past experience appears to validate our concerns. It is a point that need not be belaboured, I am sure everybody will make that point.

Should the application of sanctions continue to be part of the act? And we make the assumption that it would. We did not debate that too strongly. It would be our opinion that the strike action or lock-out and school closing should occur at the commencement of the school year in an attempt to minimize the effect on students and school programs, and that is why we come to the shortened time line terminating at the start of the school year that we will get into in a moment.

If a lock-out is required or a strike, and the question of jeopardy is something that we address, the board recognizes that the duties of the Education Relations Commission in this regard is spelled out, but we do feel that the definition of jeopardy needs to be clarified.

On the time frame, then, as indicated in the general comments, we wish to focus our important energy and time in an effective and productive way within a reduced period of time. What we have come up with here is a schedule where the notice to negotiate would be given in March and that the process would continue for six months, which should be long enough for anybody and would terminate at least to the point where an impasse has been declared by the 1st of September, and the steps, we would assume, would continue because options that are in the present legislation would be assumed at that point in time; whether you get into a mediated arbitratve settlement or whether you go to final offer selection or whatever, but at least the impasse is declared at that point in time.

The recommendation, then, dealing with that on the next page. The Schools Boards and Teachers Collective Negotiation Act be amended to reflect the time line for negotiations, mediation, the right to strike, the right to lock-out, and the right of a board to alter term or conditions of employment after rejection by the federations in the final offer, as noted above. And we do have to simplify matters a little bit on the final pages of our brief, the flow chart that rapidly portrays the time line.

The scope of negotiations. "At the present time negotiations may be carried out in respect of any term or condition of employment put forward by either party", this is the wording of the act. This open-ended approach, without any limitations, encourages protracted negotiations which result in lengthy, complex collective agreements.

This is our present, this was the '85/86 book, it is 140 pages, about the size of some decent novels. One of the reasons that it is that big and one of the reasons that negotiations take so long is the number of items that are in here that really probably should not belong in a collective agreement. Giving the open-endedness of the legislation, anything can be put on the table and short of being under a charge of bad faith bargaining one must consider them, and that obviously takes a long time. You put a hundred items on there and consider them, it takes that much longer. It is very simple to get a shorter contract, you just cut the book in half, a shorter negotiation time.

What we are now presently engaged in very often, given the open-endedness, is that we are negotiating the quality of education; we are negotiating management rights; we are negotiating the ability to pay because we are negotiating the mill rate, the largest portion of our budget being the salaries portion.

So the recommendation then is the School Boards and Teachers Collective Negotiations Act be amended to limit the scope of negotiations.

On the fact finding, we come down on the side of the Durham Separate School Board. The committee that was instructed to prepare this brief were all individuals involved in negotiations since the introduction of Bill 100, and they had no trouble at all coming to that position that the fact finder should be removed; that is the collective experience of everybody that has been involved in negotiations under Bill 100 with the Scarborough Board. The position or the conclusion just went without saying, and I won't elaborate on it. That recommendation, then, is the discontinuation of the fact finding process.

The next item, the bargaining unit, really presents no particular problem in Metropolitan Toronto, in that there is an agreement of the two elementary federations that they will negotiate, they will engage in combining negotiations. However, there is a potential there and I will not enlarge on it other to make the recommendation that it might be a good housekeeping change to the legislation.

The principals and vice-principals. I will take your question, Mr. Lane, and say that we were on both sides of the fence, and there was a lot of discussion around this. We came on balance on the side that said that principals and vice-principals should remain in the federation. It is not an easy question and one could certainly get caught up in the emotion of experience during negotiations and particularly during a strike, and how one views this question. But as I say, we come down very firmly on balance on the side of recommending that they remain inside in the

collective bargaining unit.

The right to strike and the right to lock-out. Within the act, and I am going to presume some questions here in having heard the last delegation. Within the act the definition of strike includes work-to-rule. That is part of the definition of a strike. However, it is different in the respect that one cannot apply a sanction if somebody does work-to-rule. One cannot withhold salary. So we feel very strongly that given the fact that it is presently defined as a strike, that there needs to be some changes.

The question of work-to-rule really is a philosophical question. We take the philosophical position, which I am sure we could debate, but we believe that it is the nature of the job that the professional responsibilities are not defined by rules and that one cannot work-to-rule and remove any of the services that one generally expects as being part of the professional duties and responsibilities of the teacher.

What we are saying, then, is we should certainly be allowed to apply the same sanctions in the case of the work-to-rule, whatever that means, as one would be able to exert in the case of a strike.

Given the special status of Metropolitan Toronto under Bill 127, which also impacts on negotiations, we are recommending the elimination of selective or rotating strikes and we want those sanctions limited to universal action, that that may require special attention, given the special status of Metro.

The recommendation, then, is that the School Boards and Teachers Collective Negotiations Act be amended to grant a board the right to lock out teachers at the same time as teachers may strike and to prohibit selective or rotating strikes limiting such sanctions to universal action, with a note that maybe special attention has to be paid to Metropolitan Toronto.

Partial withdrawal of services, I have already talked to that, so I will just jump straight to the recommendation, and that is that the School Boards and Teachers Collective Negotiations Act be amended to eliminate work-to-rule as a form of sanction, and that section 68(5) of said act be amended to read as follows:

A teacher shall not be paid salary in respect of days on which,

- (a) the teacher takes part in a strike; or
- (b) the teacher is locked out; or
- (c) the school in which the teacher is employed is closed pursuant to subsection (4).

I think I am open to questions. I have gone through

this as quickly as possible. I am trying to bring you back on time.

The Vice-Chairman: I appreciate it very much, Mr. Owen. I appreciate the fact that you went through it briefly too and went right to the main points.

The first question will be from Mr. Johnson.

Mr. Johnson: Thank you, Mr. Chairman.

I wonder if you could deal with the question I asked the previous group. Education Relations Commission, page 2, you mentioned that such jeopardy must be proven, and herein lies the difficult task. And it is my understanding at the present there is no process for requesting jeopardy hearing if the Education Relations Commission decides that there is no need for a hearing and, further, the commission does not have to respond to a request for a jeopardy hearing. Is that your interpretation?

Mr. Owen: That is correct, Mr. Johnson. One of the points we are making here and it is very hard to define, but one of the problems certainly is the definition of jeopardy, or at least the conditions that would produce jeopardy in May may well be different from the situation that would produce jeopardy in September. And that may be one of the difficulties even for the commission to deal with. Each case has to be viewed on its own merits at the moment and nobody really knows what the rules are.

Mr. Johnson: How can a commission make any determination if they do not know what the rules are?

Mr. Owen: Well, I am not responsible for the Education Relations Commission.

Mr. Johnson: I would hope that this committee is responsible for making recommendations that make some sense, and if there is a problem there we should be addressing it.

Mr. Owen: I think we are suggesting one avenue where there is a problem; that is, the definition of jeopardy.

Mr. Johnson: Did you have a comment in this?

Mr. Mason: No. I could refer you to --

Mr. Owen: That is right. It is not clear, and if you want the reference I am sure you know, within the act, section 62 applies to the Education Relations Commission.

"To determine at the request of either party, or in the exercise of its own discretion, whether or not either of the parties is or was negotiating in good

faith and making every reasonable to effort to make or renew an agreement. Having done that, to advise the Lieutenant Governor in Council when in the opinion of the Commission the continuance of a strike, lock-out or closing of a school, schools will place in jeopardy the successful completion of courses of study by students affected by the strike, lock-out or closing of the school."

I don't know what the rules are, what the ground rules are for the commission to make that decision.

Mr. Johnson: I would submit, Mr. Chairman, that that is one part of the bill that we have to take a look at.

I have a letter from Wellington County Board of Education, it is dated November the 12th, and the chairman takes exception to the section of the Education Relations Commission to not consider jeopardy, and with respect to the letter that the board sent November the 1st, and it is the resolutions of the board stating:

"Consideration of length of the strike and the inability of the parties to reach an agreement, it is the position of the Wellington County Board of Education that the education of its secondary school students is now in jeopardy."

That was stated November the 1st, and this strike carried on for many weeks after.

Four provincial members of Parliament, by good fortune three Liberals, McKessock, Sargeant and Ferraro and myself, also requested a hearing on jeopardy, and the board in its wisdom denied any hearing and the strike ended by an act in the Legislature. To me it just does not make sense that it can be so loosely interpreted, that the board cannot make the decision. I think it is a matter that they lack the intestinal fortitude to do so.

Mr. Owen: If I may suggest to you, I do not know the the membership of the commission, they may not have the necessary expertise to make that kind of a judgment.

Mr. Johnson: Then what the hell kind of legislation do we have? The key factor in it is left up in the air. If the strike went on for two years, would they be able to declare jeopardy?

Mr. Owen: I cannot comment. I am not responsible.

The Vice-Chairman: Mr. Lupusella?

Mr. Lupusella: Did you finish, Mr. Johnson? Can I raise a supplementary?

The Vice-Chairman: Yes, you can.

Mr. Lupusella: Okay. I understand. I mean, if a board is extremely frustrated in the course of this type of negotiations because at a certain point in time they lose control of the situation, as simple as that, they do not have any power. At the time when the teachers are going on strike, they lose all the power to try to reconvene the teachers and ask them to come and negotiate their agreement. And then, of course, we have been faced with the detrimental effects of education on the students, and then we have to rely on the good judgment of the commission or on the judgment of the government if it will introduce legislation to legislate teachers to go back to work.

I can understand the frustration of all the boards appearing before us, and I think that it is a tough job, and then we are faced also with the principle of Bill 100 in which you are unable to identify a good description of what jeopardy means.

I would like to suggest to you, if you will accept the proposition that the Minister should have the power to set regulations on Bill 100, and I do not think at this point in time that Bill 100 has given the alternative to the Minister of Education to drop the regulations under the bill. Am I correct?

Mr. Owen: One of the problems I have with your question is the assumption that we cannot define jeopardy. It isn't our responsibility and we are not given that job.

Mr. Lupusella: Even the law. Even in the law Bill 100 is not given a clear explanation of what jeopardy is. You just stated that a few minutes ago.

Mr. Owen: That is right.

Mr. Lupusella: Again, I share the frustration of the Board when they are engaged with this type of negotiations that the teachers are exercising the principle of a right to strike, they go on strike, and then the board is thrown out of the picture until the commission makes a recommendation to the Lieutenant Governor in Council that the education will be at risk.

Do you not think that the Minister of Education should have the power under Bill 100 to set regulations and clarify all of these problems or clarify this type of a process which are a little bit obscure, and that they cannot be implemented for the sake of good education of the students as to the time when the teachers are going to exercise the right to strike?

Mr. Owen: I would assume that is part of the process

in legislation. In the legislature he does have the right to amend the board amendments to legislation that applies to his particular Ministry, so in that respect he certainly has the right.

Mr. Lupusella: So would you like to see a clear definition of what jeopardy is into the law, into Bill 100, or you would like to give the authority under Bill 100 to the Minister of Education to draft the regulations to clarify all of these things?

Mr. Owen: I want to repeat something I said earlier. I realize the difficulty of putting in great precise terms what jeopardy means because I think it means different things at different points in the year. It probably means different things, say, elementary versus secondary. So I think that all those things obviously, therefore, would be taken into consideration, but it is not an easy task probably to define jeopardy. I think if we had to do it we probably could sit down and do it.

The Vice-Chairman: Thank you.

Mrs. Bryden?

Mr. Johnson: I was not finished.

The Vice-Chairman: I am sorry, Mr. Johnson.

Mr. Johnson: I am sorry. I apologize if you in any way construed that I was being critical of the board at all.

Mr. Owen: Oh no. I am sorry if I sound as if I am on the defensive.

Mr. Johnson: It is government that did not clarify the situation and it is the responsibility of the government to correct it.

I feel that we have to address the situation and to see if we can define jeopardy, and you mentioned there are different regions that jeopardy would be applicable in certain situations and not in others, but that surely is not that impossible?

Mr. Owen: Oh no, it is not impossible.

Mr. Johnson: I do feel that if we have some definition that if they were to consult with experts in the education field on the time frame on certain schools, elementary, secondary or whatever, surely they can arrive at a decision that jeopardy occurs in this particular school system because of these factors.

Certainly when the Board and the teachers and the

parents and everyone agrees, at least most people agree that it is time to consider jeopardy, then some process has to kick in and they cannot let in go on and on forever.

Mr. Owen: No. The mere fact that they have given that responsibility seems to suggest that it is possible to define it.

Mr. Johnson: At some point then it has to be.

The Vice-Chairman: Thank you, Mr. Johnson.

Mrs. Bryden?

Ms. Bryden: Thank you, Mr. Chairman.

I did want to comment on the board's attitude to the question of principals and vice-principals because we have been getting various conflicting recommendations on this, but I think your position does recognize that it is not a straight case of managers versus employees, as one person said before us earlier, that it is the case that there is a sort of collegiality of teachers and principals and vice-principals and that they should probably stay in the school, that they should be part of the bargaining unit. I think your position on that is one I would support.

Regarding elimination of both rotating and of work-to-rule and selective strikes, you are very seriously limiting the sanctions available to teachers, and it really means a strike or no strike with everybody out. Would that not, perhaps, make the difficulties of negotiation even more severe in that the final outcome is going to be a complete strike and it may be a long strike? Do you not think that some of those other things are considered as warning signs to the two parties to get together and try and avoid an outright strike?

Mr. Owen: I do not know if you want me to comment? I think one of the problems with the rights of the teachers right now is to either work-to-rule or selectively strike. At least if it was offset by the board's right to the same kind of selective action might be one way around that. Right now the only thing we can do is lock everybody out.

Ms. Bryden: If it is a rotating or selective strike they do lose their pay. They do lose their pay in that case, those ones who are out.

Mr. Owen: Yes. I think the disruption, though, if you either strike one school or Metropolitan Toronto strike one board, the loss of pay is, presumably, very often taken up by the collective action of the whole group; that they negate the full effect of the losing of pay for a period of time.

Obviously it is disruption. If you are very disruptive and you strike this school this week and that school next week or this board this week and that board next week, and the only action that we can take -- we had no reciprocal action that matches that -- the only thing that we can do is lock everybody out and that is probably not a very useful exercise or a very popular exercise for that matter. It is not a very practical exercise.

Ms. Bryden: It is a fairly substantial amendment to the act that you are asking for.

Mr. Owen: That is right. They have to take action first; they have to precipitate the action.

Ms. Bryden: Thank you, Mr. Chairman.

The Vice-Chairman: Mr. Allen?

Mr. Allen: Thank you very much.

On the question of work-to-rule, I think you were here when Mr. Reycraft asked his question about the time span anticipated and you did say on a philosophical question, yet, at the same time, it is not a philosophical question, it is a very real one.

Am I correct in thinking that legally and as far as court decisions are concerned this remains very much a matter up in the air as to whether in fact work-to-rule can be defined under the act as a strike sanction?

Mr. Owen: As a strike? I did not that it had been challenged.

Mr. Allen: Are you suggesting that the fact that it is defined as a strike in the act has been challenged? There has not been a court decision yet that has clarified the issue.

Mr. Owen: Has the court ever been asked to clarify it?

Mr. Allen: Not to my knowledge.

Mr. Owen: Not to my knowledge either.

Mr. Allen: Okay. Given the problem of definition, however, how is it possible, in fact, to declare as a sanction an action by an employee who is simply performing all the required functions that he is asked to perform legally and under a contract?

Mr. Owen: Well, I guess you get into another act, the

Education Act, which is the duties of the principal and the fact he can assign to teachers such students as, et cetera, et cetera. Some of these rights have been removed through the collective agreements, incidentally, but, having said that, what we do not do, given the nature of the job that is referred to, is contain everything in a set of rules. There are certain things that go on in schools that one expects one to go on in schools, quite reasonably it seems to me, and they somehow or other are excluded when one comes to a condition known as work-to-rule.

I don't accept personally, and this is a philosophical position, that there is such a thing as responsibilities and contributions that fall outside the rules of the game, you know, the professional responsibilities of being a teacher.

Mr. Allen: As you have described it, it does sound to me that even in your own mind there remains a very large gray area as to what those responsibilities can be defined to be legally and contractually. If you in fact remove work-to-rule as a sanction, in a general sense, how is it possible to prevent it being imposed by the back door as a way of pressuring a board? I am not sure that I see the way around that.

Mr. Owen: I do not know how to answer you other than almost to pose a question of my own. I think the way around it is to keep having this book get thicker and thicker and thicker. If you do keep defining all these things as being part of the job, instead of having 141 pages you have 282. If that is the way that we have to go, then we are certainly in for long, protracted negotiations when we dot every "i" and cross every "t" with respect to the responsibilities and expectations of teachers. And I want to go in the opposite direction.

Mr. Allen: I know, you made that point. Do you have a quite specific reduced list of terms that ought to be negotiated in all propriety as distinct from others?

Mr. Owen: That would be specific to our own collective agreement? I probably do, yes.

Mr. Allen: It might be interesting to see that.

Mr. Owen: Yes. You may next year.

Mr. Allen: Could I ask you with regard to lock-out, were you in fact as a board locked out if you were given that order to act earlier?

Mr. Owen: That is a question we discussed in the car coming down here, and it is who wants to put all their cards on the table? The reality is that it has never been done that I know of, it is a very, very serious step, let's face

it. I really would not want to answer that question, it would be a very difficult step.

Mr. Allen: It really puts the teachers in the position of drawing the line and saying, I dare you to jump over it, you have got it now. I am not sure that would be a happy position for you to be in.

Mr. Owen: No. You are right.

Mr. Allen: Thank you very much, Mr. Chairman.

The Vice-Chairman: Thank you, Mr. Allen.

Mr. Davis?

Mr. Davies: Mr. Chairman.

Mr. Owen, in the jeopardy, and you may want to confer with your colleague, Mr. Mason, it is my understanding that the jeopardy is a decision reached by the local director of education who then informs the ERC that there is jeopardy. And that was stated to us yesterday twice.

Mr. Owen: Either party, I believe. Basically you are right. What they do when the director of education contacts them is that we believe that the students' year is in jeopardy then they can meet and they can agree or disagree.

Mr. Davis: Either agree or disagree whether that indication is right. But we do not know what criteria they to make those?

Mr. Owen: No, we do not.

Mr. Mason: But I think, Mr. Davis, they can also refuse to meet to discuss the matter with the others, although I do not know that this happens.

Mr. Davis: Maybe they just do not talk to them.

One of the recommendations of the Matthews Report was to provide parties to design and use any form of final offer selection that they believe is suitable and desirable in the circumstances and they talk about a combination of mediation and arbitration where both parties sit down and select from each and arrive at some kind of final settlement. Do you think that is a fair process that should be incorporated?

Mr. Owen: You asked me one or the other. Are you asking me for my preference or whether either one is?

Mr. Davis: No. They use both. There is a suggestion that that may facilitate the resolution by allowing the parties to pick and choose out of those two

reports that they might have --

Mr. Owen: What you are talking about are these are the final positions and the mediator or the arbitrator has the authority to pick or choose out of the two final positions as opposed to final offer selection?

Mr. Davis: Yes.

Mr. Owen: Mr. Mason indicates to me, and I do not claim to have any real preference here not having that kind of experience, that probably the ability to pick out of the two final positions would be preferable.

Mr. Mason: Right now it is either/or.

Mr. Davis: It is either/or.

Mr. Owen: Yes.

Mr. Davis: You ask about the lock-out process. If the teacher federation is using partial withdrawal, would you want the right to lock-out for partial withdrawal?

Mr. Owen: We discussed that, too. In other words, having the reciprocal... I guess it comes back to Mr. Allen's question, the practicality of that. We actually wound up saying that without realizing the unliklihood of that really taking place that way.

Mr. Davis: One of the concerns --

Mr. Owen: I think that if you have got a rotating strike, which is different, so that we are going to be out this week and we are going to be in next week and strike somewhere else. So I think if you are out this week you are out next week as well. I think that becomes a little easier to make that kind of decision, and if they walk out this Monday and come back in next Monday it will become far easier and far more acceptable to lock them out the following Monday.

Mr. Davis: One of the concerns that was raised with us was that the federations have often threatened to do work-to-rules. They do not necessarily get to that point because, as I understand, if you actively get to that point then you certainly have the right to lock-out.

If a school Board had the right to lock out, all you want for them is to be able to lock out the minute that the teachers work-to-rule which they already have, or do you want them to have the threat to lock-out so the federations are saying we are going to threaten to work-to-rule, you are again then going to say: or we will lock you out.

Mr. Owen: That would be my reaction.

Mr. Davis: Would you lock them out?

Mr. Owen: To go back to the definition. I don't accept there is such a thing as a work-to-rule; that is a strike, even by definition in the act.

Mr. Davis: I am asking prior to that. I am trying to understand the process of the rationale that each board has come before us and asked for the right, to have the right to lock-out. As I understand the act now, the day the teachers start to work-to-rule you will lock them out.

Mr. Owen: At the same time.

Mr. Davis: At the same time.

Mr. Owen: Yes.

Mr. Davis: What you want is this leverage to say, as the federation says, while we are threatening to go and work-to-rule, we are starting it next Monday by the way, then you can lock them out on Friday?

Mr. Owen: Yes.

You would lock them out on Monday. They are going to start on Monday; you lock them out on Monday.

Mr. Davis: But you can do that now. The minute they start you can lock-out. I am trying to understand.

Mr. Owen: Okay. I am sorry. In answer to your question then, yes, prior to.

Mr. Davis: Will they be able to lock them out then just because they threaten to work-to-rule?

Mr. Owen: If they are giving notice of intent, yes.

Mr. Davis: So what could happen, then, and it was one of the concerns that was raised and I think it is one that I would like to think about some more, is that a board can panic very quickly and lock out the teachers even though the teachers may not necessarily go work-to-rule on Monday?

The Vice-Chairman: Do you think want to think that one out?

Mr. Callahan.

Mr. Callahan: Thank you.

I wanted to clarify something. On page 8 of your

brief you have a flow chart, and I would like some clarification because we have had it from one other trustee group. It is after 30 days from rejection of final offer, boards, they all alter terms unilaterally. Does that mean that 30 days after you can in fact write the contract in the terms of the final offer selection and the teachers have to come back to work?

Mr. Owen: From rejection of final offer, so it is from whatever point in time they had voted to reject the final offer.

Mr. Callahan: What I want to know, I want to be clear on this, I don't think this exists at the moment.

Mr. Owen: Well, it is 60 days at the moment. I think that is the only change.

Mr. Callahan: Are you telling me that after 60 days of rejection to the final offer that the contract is set in the terms of the final offer and the teachers have to come back and accept that contract?

Mr. Owen: That is right, the teachers are not out. This is when the teachers are still -- all of them have rejected the offer and we may still be negotiating. I mean, there is nothing left to negotiate. I think this is --

Mr. Callahan: They are not out on strike?

Mr. Owen: They are not out on strike, no.

Mr. Callahan: If after the 30 days or the 60 days, as it presently exists, and they have rejected the final offer, the contract then becomes in the terms of the final offer; is that right?

Mr. Owen: Or you can change the conditions after that period of time.

Mr. Callahan: All right. It still does not prevent the teachers from then striking?

Mr. Owen: No.

Mr. Callahan: Just one comment with reference to what my colleague, Mr. Davis, was saying. I want to be clear on that. If the definition of strike right now covers the rule, and I think maybe you have answered this, do you not in fact have the right if they work-to-rule to lock them out?

Mr. Owen: At the same time, yes, but not before.

The Vice-Chairman: Thank you very much.

Thank you Mr. Owen and Mr. Mason. We appreciate very much the time you have taken to come in front of this committee and we appreciate your coming.

Mr. Owen: Thank you for your time.

The Vice-Chairman: Thank you.

Our next presenters are two private citizens, Dr. David Murray and Dr. Eugene Benson.

While these gentlemen are coming forward, I would like to put the information to the committee that the Ontario English Catholic Teachers Association cannot make it this morning. We have just been informed that we will not be here.

Mr. Davis: Will they reschedule?

The Vice-Chairman: I don't know.

Please go ahead, gentlemen. Welcome to the committee and we are anxious to hear what you have to say.

Dr. Murray: Thank you very much, Mr. Chairman. I am Dr. David Murray and my colleague Dr. Eugene Benson, we are both employed by the University of Guelph. Our remarks today are as private citizens, primarily as parents, and they derive from our experience during the Wellington County strike of 1985.

I am here today as a parent, but also as an educator, to speak about the lessons of the Wellington County strike of 1985. I do not have any desire to open old wounds which, thankfully, have been healing, but I do want to make some observations on the legislation you are reviewing. The basis of my remarks is the experience that my wife and I had as members of the Parents Action Committee trying to bring the strike to an end. My colleague, Dr. Benson, was the co-chairman of the Parents Action Committee along with my wife, who could not be here today.

The purpose of the legislation under review is to further the harmonious relations between boards and teachers by providing for the making and renewing of collective agreements. Happily, in most instances collective agreements have been renewed without strikes, but the act defines and specifically recognizes the right of teachers to strike. I do not wish to challenge that since it is a right possessed by many other groups, professionals included, in our society.

Although I accept the inclusion of the right to strike within the legislation, I believe the purpose of the act should be to prevent strikes from occurring and when they do

occur, to bring them to a speedy end with minimum damage to the parties. I would like to see a statement such as this in the purpose act. It would then be clear to all that each strike which occurs represents a breakdown in the harmonious relations the act seeks to reinforce. Every school strike would then properly be seen as a failure of the provisions of this act.

I want to focus the remainder of my remarks specifically on what I believe to be serious flaws in the existing legislation; its provisions, or lack of them, following the outbreak of a strike to bring it to a speedy end and to minimize the damage to students and their families.

During a strike, students and their families are completely helpless. They virtually become non-persons in the eyes of the parties to the strike, the teachers and the school board. The teachers cease to have anything to do with them and the school board is unable to cope with their needs. Nor, as we found, can the local school board arrange any satisfactory substitute for students affected by the strike. Even the Ministry of the Education has no satisfactory means of assisting students during a school strike, especially a lengthy one.

There is no compensation for students caught in a school strike. For example, we discovered that students, during a strike cannot even take correspondence courses in subjects for which they are already enrolled. The legislation you are reviewing goes to great lengths to define the respective rights and responsibilities of teachers and school boards and the duties of the Education Relations Commission. But nowhere does the act refer to students or their rights. I cannot imagine a greater violation of a student's right to be educated than to be the innocent victim of a school strike. Students are obliged by law to attend school until the age of 16. What happens to students when by another law of the province they are victimized by a school strike and unable to attend school?

I urge you to give greater thought to how students' rights and the legitimate concerns of parents can be accommodated within legislation which sanctions school strikes. How could this be done? One possibility would be to restructure the Education Relations Commission to include one or more high school students on a rotating one-year appointment as well as one or more school parents.

I notice from the latest annual report of the commission I have, that in 1983-4 that the five members of the commission are described as having experience in educational labour relations, teaching and the work of school trustees. None of the appointees is described as a parent or student, nor, apparently, do they see as one of

the of their roles that of representing the interests of either students or parents.

I want to turn next to the role of the Education Relations Commission once a strike has started. I have read the act carefully and the only provision that I can that deals with the way strikes are to be ended is Section 60, paragraph (h) which empowers the Education Relations Commission to advise the government when the continuation of a strike, et cetera, will "place in jeopardy the successful completion of students' courses of study." Quite frankly, I find it surprising that in a statute defining the collective bargaining procedures between teachers and school boards so little attention is given to what happens when negotiations break down and a strike ensues. It may not happen often, but I believe the legislation should set out clearly a procedure to bring an end to strikes.

I would like to summarize briefly our experience with the Education Relations Commission and the application of the jeopardy clause during the Wellington County strike. About a week after the strike began, the parents through the Parents Action Committee organized a mass meeting in St. George's Church, Guelph, the largest meeting I have ever witnessed in Guelph during the 20 years I have lived in the city. One of the resolutions passed at the meeting stated that if local negotiations, which were scheduled to resume the next day, did not end the strike by October 15, the parents would then demand legislative action.

After another breakdown of the talks, the parents met with Bob Field, the Executive Director of the Education Relations Commission in Guelph on October 10. At that time he told us what essentially was to be the stance of the commission throughout the strike - a locally negotiated settlement was far preferable to settlement by legislation. What the parents did not realize at the time was that the ERC politely but firmly was refusing to do the only thing which could end the strike, call a jeopardy hearing. The Commission's refusal to call a jeopardy hearing continued throughout the strike, presumably for the same reason.

Mr. Field also told us then that to his knowledge no student had ever lost a school credit because of a school strike. Again, we did not know then that it is the policy of both school boards and teachers to do everything possible following a strike to see that students obtain paper credits for the courses they have taken, even if the substance has been greatly watered down. The students are the real losers in the end because they are the ones left with devalued credits in this game of educational fraud. As one parent told us, giving credit for watered down courses is synonymous to building a house on basement walls made with half thickness of cement.

On October 18, with the strike then in its 21st day, the Parents Action Committee issued a declaration of parents' concerns, rights and recommendations for a settlement which received extensive media and wide community support. The recommendations are not relevant to your review, but I want to quote to you the six reasons we listed at the time for issuing the declaration. They are vivid expressions of the frustrations of parents trapped in the middle of a school strike. The declaration achieved no more than our previous efforts, but everything we predicted did occur as the strike went on.

"We are moved to issue this declaration for a number of reasons:" (this is taken from document of October 18, 1985)

(a) because we feel very strongly that our children in our secondary schools (some 8,000 of them are being denied access to an education to which they are entitled and which their parents have paid for; (b) because the majority of our children have been denied access to schools in neighbouring jurisdictions and to the secondary schools of the Separate School Board in Wellington itself; (c) because there is a growing feeling of frustration and even anger on the part of parents at their inability to obtain factual information concerning the course of the strike or to influence in any way its resolution; (d) because there is a perception held by most parents that the negotiators for both parties have failed and that a dangerous impasse has been reached. Despite the fact that current negotiations began on March 27th, 1984, the parties are still widely separated and, in fact, at this date are not even meeting; (e) because we are concerned that public frustration and anger may be vented both against the board, which feels it has a duty to defend the public interest, and against our secondary school teachers who feel they are being unfairly treated; and lastly, because we are convinced that the longer this strike continues, the more destructive it will be to long-term relations among the trustees, the teachers and the community at large."

The very same day this declaration was issued, October 18, the four MPPs from the ridings affected by the two school strikes -- and this I understand has been referred to earlier -- petitioned the Education Relations Commission to hold a jeopardy hearing. Even though there was then little likelihood of a local resolution to the Wellington County strike which had lasted 21 days, the Commission rejected the legislators' position. It stated publicly it could hold a hearing as long as negotiations were in progress.

Nowhere in the legislation does it state that jeopardy

hearings cannot be held while negotiations are in process. In fact, the legislation is silent on what constitutes a jeopardy hearing, when it is to be held, and the procedures to be followed, et cetera. This ambiguity, I suggest, is a major flaw and greatly aggravates the divisiveness caused by a strike.

Following the Commission's rejection of a jeopardy hearing, the parents recommended the alternatives offered in the legislation either final offer selection or another form of arbitration. These, too, were rejected. On day 43 of the strike, following 200 hours of mediation, the parties rejected a contract proposed by the mediator. This contract was eventually imposed by legislation.

I have given you this precis to underline that as parents we did absolutely everything we could do to bring this strike to an end and our efforts ended in failure. The strike lasted 52 days and had to be terminated by legislation.

I place much of the blame for this sad state of affairs on the Education Relations Commission which was so wedded to the concept of a locally negotiated settlement brought about by its own mediator that it consistently refused to intervene. The Commission may well do an effective job of carrying out the rest of its duties under Section 60 of the act, but on basis of our experience, I suggest that it is an abject failure in ending a strike once it has started.

Because the Commission proved that it was incapable of action, I believe this section of the act needs to be strengthened. At the very minimum, the clause on jeopardy needs to be rewritten. I must ask you also to examine very carefully whether a body, structured the way the Commission currently is, is the most effective vehicle for ending strikes once they start. Surely there should be a time limit in a school strike which would automatically trigger a jeopardy hearing. I also think it would be salutary to hold a public jeopardy hearing where the all of the parties involved, including parents and students, could present their views. Another possibility is that after the passage of a certain amount of time in a strike, the parties by law would have to resort to one or other form of arbitration.

Whatever the solution, I urge you to act to prevent any more school strikes that last as long and create the damage caused by the Wellington Country strike of 1985.

Lastly, may I quickly summarize the points I have made.

The right to strike should not be removed; (2) that the purpose of the act should be clarified. This clarification should include a statement that the act is

designed to prevent school strikes from occurring, and when do occur, to bring them to a speedy end; (3) the rights of students and parents need to be recognized in this legislation, possibly by restructuring the Education Relations Commission; (4) the legislation should include a clear procedure to bring an end to strikes; (5) if the concept of a jeopardy hearing is to be retained, the legislation should spell out specifically under what conditions it will be held. The hearing should be public with all the parties having an opportunity to present their views; (6) there should be a time limit specified in the legislation which will trigger a jeopardy hearing or, alternatively, force the parties to resort to one or other form of arbitration.

That is my presentation, Mr. Chairman. My colleague, Dr. Benson, has a few remarks that he wishes to add.

The Vice-Chairman: Go right ahead, Dr. Benson.

Dr. Benson: I just want to say that I associated myself completely with this document, and looking at it from our point of view the key thing, of course, is the definition of what is jeopardy.

It became very clear to those people who were in contact with the school board in Wellington Country and with the teachers that they were in fact very, very far apart. The question when they kept saying while mediation is on we, the ERC, cannot enter in, to me -- and word is used in the brief -- was a fraud. And our own suspicions, our own knowledge of this was amplified when in fact the results of the strike became evident which was that they were so far apart that only the government could intervene and impose a settlement which they would not agree to make. In other words, that word negotiation was holding up the whole business of jeopardy.

At a very early period we got in contact with ERC, Mr. Bob Field, we appealed to him strongly. We said that we think our children's education is in jeopardy and after a while of irritation he said could do nothing about it, that it had to go to the commission. In early November I discovered who the people were on the commission and I was in contact day after day with Professor Donnelley at Queen's University who was the chairman of it. I kept saying to him, "What are your criteria? When are you going to act? The school board down here, everyone says it is in jeopardy, when are you going to declare it?" I could get no answer whatsoever.

As a matter of fact, this is the astonishing lesson, in my opinion, from the Wellington strike that every aspect of the legislation which is supposed to be implemented was ignored. There was never a jeopardy hearing in the case of

Wellington County. What happened because of the political situation, and you may remember what was happening with the Conservative Party at that time, the government seemed unwilling to bring it in. Whether any recommendation was coming forth from Professor Donnelley, there was the further fact that when the government finally brought both teams to Toronto to say you must negotiate, I had calls from both sides saying, "We are here and there is no government representative, we have not yet met." At that point, we started phoning the Premier's office and getting very angry indeed.

As you know, it was then the government imposed a solution after the vote was brought in the House. There was no jeopardy hearing. We feel that the legislation in fact allowed a robbery of the semester system in Wellington County.

Just a couple of other things I would point out. I think the present legislation brings education in this province into disrespect. It is pointed out in our brief and it has been quoted to you that no student ever lost a credit. We think that is extraordinary. How can students lose a semester and not be denied credit? How can they lose 12 weeks and not affect their education? And I must say here, once again, that I think the universities have not played their proper role in this. In fact they collaborated in what I call legalized robbery of students' time.

The Committee of Ontario Universities did not at any point enter in and say that the education is being jeopardized. They did issue one statement and said that we will take into consideration the record of those students coming from areas where they have lost most of their semester. That is untrue. I am a university professor, and never do the universities identify those students who have lost a semester. Those students have to compete with other students who have had the full year's education.

The last thing I would say is this: While everyone here, I think, recognizes the right to strike, we are in a dangerous position where we may be talking about a monopoly. That, say, New Brunswick were the police and we think of this as an essential service, they have the right to strike but there is something you can go to: we can say jeopardy pertains to the town and you can bring in the RCMP.

We tried to get our children into the separate schools; we were denied it. We tried to get them into local jurisdictions and most of them could get into it. We had students going as far as New Brunswick, literally, Brighton, all over the place. So that everywhere that we went we found that the legislation penalized the parents. So it is a special kind of strike. If Ford Motors has a strike you can buy from Chevy, Toyota or somebody else. We couldn't

get an education any other place.

Frankly, had the political situation at that time not resolved itself to allow that vote, we believe that it would not have opened up our schools until the following January or February. Now, we think that is an absolute disgrace, and if these words sound passionate, I cannot be dispassionate on an issue like this.

Finally, I merely turn round and say that jeopardy, from our point of view, is essential and that it be defined. To leave it undefined is to invite exactly the kind of thing that we have here. And it does, I think, a disservice both to the teachers who really wanted to get back to work and to the board.

Thank you very much.

The Vice-Chairman: Thank you, gentlemen. It certainly is refreshing to have some parents come in front of this committee, so far I believe you are the first two. I want to thank you for your excellent brief.

We have some questions for you. You will hear the first question from the member of Parliament who was involved at first in your situation and who certainly has education at heart.

Mr. Johnson?

Mr. Johnson: Yes. Thank you, Mr. Chairman.

I, first of all, would like to congratulate you on your brief, and since you are a constituent, I am doubly pleased to have the opportunity. You have both made an excellent presentation and I have no hesitation in supporting your position. In fact, if you heard the previous submission, you will realize that jeopardy is one of my major concerns.

I was one of the members that requested a hearing of jeopardy and was turned down. The letter is dated November the 6th, reply from Mr. Field, Chief Executive Officer of the Education Relations Commission.

It goes on to say,
"Furthermore it has not been the practice of the present commission to hold hearings with respect to jeopardy."

They don't believe in it.

"To this point neither party has made a claim of jeopardy which is substantiated with data and other things."

Yet, on November the 1st, Paul Nelson, Chairman of the Board, requested a hearing of jeopardy and that, too, was turned down.

In his request, Mr. Nelson points out that:
 "Recent negotiations were terminated when the mediator's proposal was deemed unacceptable to both parties". And that was November the 12th.

"Accordingly, a new mediator will be necessary as we have now entered the ninth week of the strike and in all probability there is no prospect for settlement until a new board takes office in December. At that time we will have the unfortunate distinction of suffering through the longest strike in Ontario history."

He goes on to plead for a hearing of jeopardy and you will see that.

This brings up one other question in relation to the strike in Wellington. It was my feeling that it was compounded by the fact that it was a municipal election year and that several of the board members were not coming back, basically there were laying back board members. I think some of them hesitated to take action that would pass on to the new board members, and there seemed to be just a bit of a vacuum created that no one really wanted to make a decision.

Did you sense this?

Dr. Murray: Mr. Chairman, I think that that may have been the case, but the comment that implies the opposite is that following the elections which occurred on November 11, somewhere around that there, with a change, the chairman of the Wellington County School Board was defeated in those elections and a new board came in. They did not take office until early December, but there was no indication as a result of the elections that the outgoing board members had changed their attitude or, indeed, that the incoming board members offered any solution to the strike. So that without having inside knowledge of what was going on in the board, I cannot corroborate your feeling that perhaps because it was an election year the board members took a stance that made it more likely that a strike would occur or took a stance that made it more likely strong action would not take place.

Mr. Johnson: I didn't mean to imply that there was any fault on the part of the board. I just simply meant because of the process of the continuity.

Dr. Murray: Well, the only other comment I would make is that I am not sure, Mr. Chairman, that debating how the

strike occurred or why it went on is necessarily germane to the issues that your committee is faced with. I confine my remarks to what I felt were the concerns in the legislation that arose from the strike, and we could go on at great length about what happened in the strike. I really think it is how to prevent others from occurring and going on for the same length that is the most important issue.

The Vice-Chairman: Dr. Benson?

Dr. Benson: There is a point, I think though, on this, that whether rightly or wrongly there was a perception on the part of the teachers negotiating that the new members of council or the school board would be more lenient. So that helped to prolong the strike. Here it was at the local level a political factor which should have nothing to do with the issues with which we are concerned. As I say, rightly or wrongly, that was their perception.

Mr. Johnson: Dr. Benson, the reason I have raised the point is that I feel that every third year we face a more difficult task because of the election process, and in Wellington it was apparent that there was complication one way or the other. My point is that if we change legislation, should we not also address that fact that every third year we will be caught in the same situation?

Dr. Benson: Yes.

Mr. Johnson: My feeling is that the ERC or someone should have more authority to become involved in a strike situation during a municipal election period.

Dr. Murray: Mr. Chairman, I would like to see somebody who could solve all the political problems that might occur, and it might be that the ERC should be given more authority.

My great concern at the moment is that from the performance of the Commission during the Wellington County school strike, I have no confidence in its ability under the current legislation and current members to step in and solve the strike based on what I saw.

Dr. Benson: I would just add to that. We searched and searched and searched and we could get no place in writing or by statement what criteria are to be involved. And if you have no criteria then it is a chaos. You have got to have criteria.

Mr. Johnson: It is my understanding if there is no process for requesting jeopardy hearings then the Education Relations Commission decides there is no need for hearings.

Dr. Murray: That is right.

Mr. Johnson: Secondly, the Commission does not have to respond to requests for jeopardy hearings.

Dr. Murray: It is obvious.

Mr. Johnson: And those are two points I think should be clarified.

Dr. Murray: I think there was a suggestion made in the previous question period that the Minister should have power to issue regulations. I think that this committee should decide whether a procedure should be written into the act or whether it should be ministerial regulations. But I would urge that something be done to clarify it.

Mr. Davis: Just a point of clarification, Mr. Chairman.

The Minister of Education has the right now to set any regulation he wants within the regulations without coming to the legislative body of Ontario for approval. What he cannot do is change an act. He, in fact, can change regulations without any other process. He can do that now.

Dr. Murray: Since the act is silent on the jeopardy process, you are suggesting that he could issue regulations with the government?

Mr. Davis: Yes, he does it all the time.

Mr. Lupusella: With respect, will you, please, explain to us why the Minister of Education was unable to draft a nice regulation to end that strike?

Mr. Davis: You really would not want to me to comment on that, Mr. Lupusella.

Dr. Benson: Exactly. This is our point. This is where the parents are completely isolated, have no power, no authority.

The Vice-Chairman: For a point of clarification I am going to ask our lawyer, Mr. Albert Nigro, to explain a little bit what we just got into before it gets out of hand.

Mr. Nigro: I do not want to render a definitive opinion, but this act unlike many other acts does not empower the Minister to make any regulations. If the Minister does not have any power to make any regulations under this act then, notwithstanding that the normal legislative process it that a minister can make regulations under his jurisdiction, he could not do so under this act. It would be beyond his power - as far as I know anyway - under The Education Act.

Mr. Callahan: Bill just slipped it in under --

Mr. Lupusella: With respect, Mr. Chairman, that is what I thought --

The Vice-Chairman: It is straightened out right now.

Mr. Johnson, do you have any more questions?

Mr. Johnson: Just to finalize that point. Are you saying that the Minister has no power to change? The Minister could not order the ERC to take action?

Mr. Callahan: There is no clause at all.

Mr. Nigro: No. I am just saying he has no power to make regulations under this act, as far as I can tell.

Mr. Johnson: Are you suggesting that a change in the act is needed to accommodate a request by these two individuals in this particular case?

Mr. Nigro: There are two things going on. One would be a change in the act which would require a bill to deal with the jeopardy question which has been raised many times before this committee. The other thing might be, as Mr. Lupusella suggested, that under the regulations you could provide details for what constitutes jeopardy. In order to do that, the second thing, you will have to change the act only to allow the Minister to make regulations in terms that would allow for that.

Mr. Johnson: But a change in the act is necessary?

Mr. Nigro: Yes, that is right.

Mr. Johnson: Thank you, Mr. Chairman.

Mr. Lupusella: Mr. Chairman, because I made an accusation to a previous Minister, I would like to withdraw my statement because he or she be entitled the power to make regulations because Bill 100 was not giving her or him such power.

The Vice-Chairman: I am not too sure --

(Interjection)

The Vice-Chairman: I am not too sure that the Minister could not make regulations under another Act of Education.

Mr. Callahan would you ask your question.

Mr. Callahan: I am very interested in your brief. As the Chairman said, in coming from the parents who were involved, as it were, in the trenches during this instance, I am very much appreciative of it. I can tell you that the members of faculty certainly went through a lot of agony during that strike.

I have to say one other thing. I notice that you are concerned that the jeopardy hearing was not held, and this is really explaining that with the Sudbury strike which went on for I think sixty-nine days.

Dr. Murray: Fifty-six.

Mr. Davis: Fifty-two, Mr. Callahan.

Mr. Callahan: Sixty-nine I thought it was or sixty-six. You have got your facts all botched up this morning, Mr. Davis.

Mr. Davis: Sixty-six days?

Mr. Callahan: Yes. You are telling us that the Minister has the power to make regulations and now you do not even know the dates.

In any event, what I would like to say is this: We were concerned enough as a government and the Minister was concerned enough as a government, in having seen the members go through this lengthy strike in your County, that you in fact have the matter referred to the General Government Committee. I would like to say what happened back in Sudbury. That should have been the trigger; it would have avoided the entire strike in your community had this hearing been held at that time. But I think that was back in what? Sudbury was what, back in 19-- ? Fifty-six days, 19 --

Dr. Murray: Fifty-six in 1979.

There are two points to be made in response to that comment. I believe the government of the day struck a commission known as the Matthews Commission to review this legislation in 1980 following the Sudbury strike. Secondly, the Education Relations Commission commissioned a study following the Sudbury strike, which they published as part of their documents, to trace the careers, I guess, of students in the Sudbury high schools going on to university. Mr. Field produced that study for us and he claimed that it showed that there was no impact from students affected by the Sudbury school strike: (a) they had not lost any academic credits; (b) they could discover no instance where students did not get into university because that is what they were looking at, only the first year of university; and (c) they could discover no instance where students had suffered because of the nature of the strike.

I guess the question that I asked and I still ask is, since none of these studies, or this one in particular, proved that anything negative happens to a student in a school strike, can one logically extend that and say that if students do not go to school the whole year long this is not going to affect them? Because that is basically what the logic is, that nothing happens to a student if he does not go to school or she does not go to school.

Frankly, I will give you my candid comment as an educator. I read the study and did not think it was very good. The University of Guelph tried to get a study done of the results of the Wellington County school strike, and because of difficulties between the Education Relations Commission and the university and the person who was going to do the study, the proposal fell through, so we have no study on this basis either.

So, in short, action was taken following the Sudbury strike. It clearly was not sufficient to prevent another strike of the nature of the Wellington County strike, and my earnest hope is that the work of this committee will do something to prevent another one from occurring somewhere in the province.

Mr. Callahan: My next question was going to be whether there was any definitive evidence and what the result of this was. I really do not think it takes a commission being set forth to understand something that by sheer logic one would expect to happen after 56 days in Sudbury. In fact, had I been the Minister of the day, and it was the form of government obviously, I think I would have looked at the report and said, did this guy have blinders on or what, because in fact it defies logic that there would not be an effect.

I think as well, recognizing and going back again -- and it is not an apology at all, it is an explanation -- we had just formed the government; we were caught in a strike which was terrible, and we were attempting to implement what was provided by an act under the former government. I agree with you that, in fact, that the definition of jeopardy does not require a hearing. What it requires, I suppose, is someone just looking at the situation and viewing the sides of both parties and saying that if they are ten miles apart there is jeopardy.

We certainly appreciate your comments coming forth because there are obviously areas that have to be looked at.

I would like to put one other to you and I put it to some of the other trustees. The former situation where the former government withdrew or reduced grants to --

Mr. Davis: Do you want the data? Do you want the data, Callahan?

Mr. Callahan: -- that the trustees, being politicians, were faced with the difficulty of trying to negotiate with the teachers, but in the framework of what was acceptable locally politically. As a result of that, perhaps -- I do not know. I am sure that the trustees and the teachers all tried to look at the question of the students' best interest, but when you have got sort of those constraints pulling away at you --

Mr. Johnson: Then we will not have any more problems in the future.

Mr. Callahan: Well, that is the rule, Mr. Johnson. But when you have those pulling away it really becomes the key issue, which everyone has said is the issue to be determined, is the best interests of the child are somewhat clouded.

I like your idea of the -- I cannot speak for my government, obviously -- but I like your idea of the student or parent being on the, whatever that committee is to determine jeopardy, because I think they bring it to a very localized concern that perhaps is overlooked by people who are from the local community.

Dr. Benson: I will just make a comment. You said that in the negotiations -- I put in quotation marks in the case of Wellington County -- that the children's education that is clouded, in fact, we have forgotten. The teachers are committed to a negotiating stand and they are -- frankly, and one does not blame them in that sense -- for money, conditions and so forth.

The trustees, they feel that they have to reflect the tax situation of the county, and so forth, and education is the last matter. Both sides told me that because I was involved in both sides. They told me that quite bluntly. There is no question about that.

Mr. Callahan: It became somewhat apparent in the Wellington strike because, as was indicated, these trustees were not going to run again.

Dr. Murray: Some of them did.

Mr. Callahan: Some of them did, but as I recall many of them were not going to. I would like to just comment. I am not certain that I agree with you with reference to the teacher aspect of that. My experience has been in talking to many teachers, probably the larger majority of them, that they would prefer to be back in their classroom with students as opposed to being involved in what is really a

process that is probably flexible enough or desirable enough to be used in an economic climate, as you point out in your brief, but becomes very difficult in a climate where you are dealing with a much more fragile commodity -- in fact, probably our major resource -- and allow that to take place.

Dr. Benson: I would not want you to be misunderstood and say that the teachers as teachers do not care for their students. Not true. I mean, they are very committed to them. But you see what I am saying is, as negotiators, those teachers are not now in the role of teachers, they are in the role of negotiators locked up in a motel for 24 hours a day and their duty, frankly, is not as not teachers to their students, but as negotiators to their union, and that distinction is very, very important. Very important.

Again, what we have heard today is how realities, that should not have anything to do with this matter, are in fact affecting it adversely in municipal politics, and in this case provincial politics. We were caught in that. We feel that the key to protect the students and their parents is jeopardy.

I might say that the one commissioner you were asking about who had looked at the whole matter after Sudbury -- and you have mentioned, David, was the Matthews Commission -- I read that very closely and, in fact, when you come to the area of jeopardy there is nothing there, nothing there. And I say there is an irony there because Matthews is Dr. Matthews, the President of our university, and both David and I have told him it is a very bad document in that respect.

Mr. Callahan: And you are still there?

Dr. Benson: We are still there.

(Interjection)

Mr. Callahan: Just a final item, if I might.

Mr. Johnson: The member mentioned something about the trustees and I am not sure if I understood it correctly. I certainly did not intend to imply that because there is trustees leaving the board that it meant that there was lack of interest or concern about it. I do not want to leave that impression. What I simply meant is that with the changeover there was not that continuity, and that we have to address that some time in the future. But that is another matter.

What I do want to point out quite clearly is that the trustees as of November the 1st requested a hearing of jeopardy and were denied it and again followed through.

Mr. Callahan: But, again, there is nothing in the act that says there is a hearing of jeopardy.

Just a final item. I am sure that you and any citizen in this province would not want to give a carte blanche power to a senior level of government to impose by legislation the rights of people without having shown that the rights of those who are the major object of that particular process are in jeopardy.

Dr. Murray: I think that is true and it raises a very interesting point that I tried to deal with in this brief, and that is that nowhere in the legislation or really in the process are the rights of a very important constituency, the students, taken into account.

I would like to see, if a hearing is to be included in this jeopardy process, I would like to see an opportunity for a public hearing where those rights could be articulated. The students we found -- and I think that Dr. Benson would agree with me -- were the most sensible, balanced people through the whole strike. When other people lost their minds "relatively", the students did not, and my admiration for them went up enormously.

Dr. Benson: Could I add a point to that?

The Vice-Chairman: Briefly, please.

Dr. Benson: Certainly no part of our argument is that we would be looking for government to impose settlements in an arbitrary fashion. What we are saying is that a definition of jeopardy, which would have to be well thought out, which would certainly be complex, it would protect our constituents, the children, and the parents, but I think very importantly it would protect the teachers.

The teachers in Wellington County were losing 10, 12 thousand dollars most of them walked to the bank, but they could not find a definition of jeopardy. And interestingly enough, the amount of misinformation around -- I talked to many chairmen of departments and they said, "Once this strike is over we are going to put in special classes, we will add on a half an hour here". And they were under the impression that they could actually make up for some of this lost time by adding. Not one minute was added. They didn't know that.

The Vice-Chairman: Thank you.

Before going to Mrs. Bryden, a point of clarification for all the members is that the act was passed with the support of all three parties and was something that was done in the House with unanimous support.

Mrs. Bryden?

Ms. Bryden: Thank you, Mr. Chairman.

I, too, am many very pleased that two parents came to us and told us their experiences with the act, and the fact that you organized a very strong parents organization indicates that there was a very large community interest. In fact, you could almost say that the parents were a third party at the bargaining table and the ERC was also a party, but not officially, of course.

I have been just reading the powers of the ERC under the act and they have very broad powers, but you are quite right that there is no definition of jeopardy or of the rules that should apply to a jeopardy hearing. I really congratulate you on bringing out that point so strongly. I think this committee should spend considerable time reviewing the whole question of jeopardy hearings and what sort of rulings there should be for them; also, whether they should be compulsory at a certain date. You didn't specify, I guess, what particular date you would like to see, at what stage it should come in, after how many days?

Dr. Murray: Could I make a comment on that particular point, and again I am going from the 1983 Annual Report of the Education Relations Commission. In the year after this act first came in there were, I think, five or six strikes, of which five had jeopardy recommendations, with a range of days all far less than the Wellington County strike which went on.

The only other jeopardy advisements that I am aware of from this report occurred in Renfrew in '77/78 with a 44-day school strike -- and it has been already alluded to in Sudbury in 1979 with a 56-day strike. Quite frankly, and I think Dr. Benson will agree with me, that some action should be taken at a much earlier stage in a strike, 15 days or something of this sort.

I would not want to be precise on the day. I think a point was made earlier that different conditions apply, elementary, secondary, where you have a semestered system or you have a non-semestered system, and what I attempted to argue for is a process which would bring out when jeopardy would occur in the particular area. But I certainly do not see any argument for allowing a strike to continue 52 days or anything close to that. If somebody is arguing that no jeopardy to students occurs as the strike goes on, I think the onus is on them to prove that.

Ms. Bryden: Yes. I think you are right on that. The other point in your brief that I was very interested in was the request for openness, public hearings, advertised public hearings, the publication of criteria on which jeopardy is

based and things of that sort.

You may recall the NDP/Liberal accord that helped to get this present government launched included a sunshine package which was freedom of information and more work for committees, more public hearings of this sort. But also it did include publication of criteria and rules under which boards and commissions operate. Also it included the recommendation that the appointments to things like the ERC should be opened up and any member or any individual could make recommendations to the government as to the people who should be on such commissions. I would certainly support that part of your brief quite strongly.

You might even consider whether there should be an advisory committee to the ERC made up of students and parents and other representatives of the general public. It might be difficult to put those people right on the board, especially at the moment, it is only a five-person board, but some boards do have advisory committees that review the things like decisions on criteria and that sort of thing, or make suggestions. So that is something that might be considered to open it up. Once again, the appointments to such advisory boards should be open as far as possible. At the present time the government still has the final say in who gets appointed, but at least nominations should flow to them from all sources.

Just one other area. I think you are definitely demanding substantial reform of the ERC, and it looks like it is not working too well in a lot of areas.

I think all committee members should be provided with the latest annual report, Mr. Chairman, if that can be arranged so we can have a clearer idea of what they do.

But I think the whole make-up of the board as I was just mentioning should be considered and their powers; whether some of those powers should be delegated to others or go back to the bargaining process rather than them having the complete say in the process. They are required "to provide such assistance to parties as may facilitate the making or renewing of agreements" - well, that is very vague as to what assistance they should provide - "and to maintain an awareness in negotiations". Again that is very vague as to how the various bargaining sides report to them.

So I would like to recommend that the ERC's power should be looked at. If you have any additional areas that you think should be looked at, I would like to hear it.

Dr. Murray: I think that the thrust of the presentation was that we do not have any experience of the work of the ERC prior to the outbreak of a strike and, therefore, I have no basis on which to comment other than

the fact that the negotiations went on for 21 months in Wellington County and nothing happened. So one could draw one's own conclusions from that. What the thrust of the brief was that following the outbreak of a strike, whether because of legislation or the ERC, it is a very inadequate situation.

The Vice-Chairman: For Mrs. Bryden's information, our clerk, Debbie Deller, will be contacting the people in charge and you will be getting a copy of the '85/86 Annual Report.

Ms. Bryden: Thank you.

The Vice-Chairman: The members will all get one.

Mr. Reycraft?

Mr. Reycraft: Thank you, Mr. Chairman.

A good part of the discussion and interchange around this presentation has focused on the failure of the Education Relations Committee to hold a jeopardy hearing. I am a bit intrigued by that particular phrase, and I would like to ask the delegation if either of you is aware of any precedent, when a formal hearing of jeopardy was held, or any provision within the legislation, to hold a jeopardy hearing?

Dr. Murray: The answer to the second question is, obviously, there is provision in the current legislation for a hearing to be held. In all of the discussion and conversation during the strike, the word hearing was used. It was used even -- and this is from memory -- by people connected with the Education Relations Commission. So I assume that the commission in some forum held a hearing, but it was not clear to me whether this was internal or external.

My thrust here in the brief is that in defining the procedures for jeopardy, I think a hearing should be held and I think it should be public; in other words, I think the criteria should be laid out and that the public should be involved in this. I refer to the comment that was made over here that some sunshine is needed. Parents found themselves totally in the dark about what was going on, as did students, and, quite frankly, so did the parties to the negotiation. I do not think that either the teachers or the trustees were aware.

I feel that at a certain point some publicity, some public forum where these points could be made would be useful. The reason that the parents began our work, by holding a public meeting, was to provide information for the parents and students and we asked -- actually, we put an

enormous amount of pressure on the teachers and on the school trustees, neither of whom wanted to come and face the public to do that; and at least this was the first time in the Wellington negotiations -- and it sadly happened to wait until after the strike occurred -- but it was the first time that the public in all its sense received information about what had led up to the strike.

The Vice-Chairman: Dr. Benson had a comment.

Dr. Benson: I think Mr. Reycraft was right to bring up this question of: Where has there been a hearing before? There was a mythology actually created, and I think it arises from the document that jeopardy presumed there would be hearings so that people would be informed to say the education is in jeopardy, but in fact it did not happen, it could not happen, and we discovered that after been told by Mr. Field that there could be such a thing as jeopardy hearings. There never was one.

The Vice-Chairman: I think Mr. Johnson has a point of order.

Mr. Johnson: Mr. Chairman, just to follow-up on Mr. Reycraft's question. We are hopefully here for one purpose, to try and improve this act and I think we should be all working in that direction.

Mr. Reycraft mentioned the process of the ERC and asked a question that I am not sure anyone can answer. Would it not be within the mandate of this committee to request the ERC to give us an outline of what they did do in the Wellington County dispute? I am sure we can use it as an example of how to avoid another strike. Is that in order?

The Vice-Chairman: It probably is, but all I can say is that the ERC held hearings only in the first or second year after they were --

Mr. Johnson: Let's review what the ERC, their involvement was in the Wellington County strike from Day One.

The Vice-Chairman: Well, we can look into that. We certainly can.

Mr. Reycraft: Mr. Chairman, I am not challenging Dr. Murray's views on why there should have been a hearing or why there should be hearings. I am saying that it is unfair to criticize the ERC for not holding one because that has not been a part of the procedure in the past. That is the point that I am trying to make.

Dr. Murray: Could I answer that point. My reading of

section 60, paragraph (h), says: that the ERC is to advise the Lieutenant Governor in Council when, in the opinion of the commission, the continuance of a strike, et cetera, will place in jeopardy. It does not say that they cannot hold a hearing. I think it is open to them, and had they wished to do so they could have done. The very fact that they hid behind secrecy, did not lay out any criteria, did not indicate that they were willing to hold a hearing, I think that that stands for itself.

Dr. Benson: To add a further point. How can the ERC advise the government if it has not held a hearing to discover what is the effect on students? Are they in the semester system? Are they in the full year? What is the drop-out rate? And so forth.

Mr. Reycraft: It can do so, Dr. Benson, by doing exactly what it did in the case of the Wellington strike, by maintaining constant contact through its mediator, fact finder, whatever, through its officials; maintaining constant contact with both parties in the argument by monitoring the situation very, very closely.

I reject completely your suggestion that somehow the commission in this case was remote and disassociated from what was going on in Wellington County. That is not the case.

Dr. Benson: I deny that. Mr. Field was in Guelph once, Professor Donnelley never walked in Guelph, he never phoned any of us, we had no contact whatsoever. I charge very sincerely they were remiss in their conduct, and I have said that all the time.

Dr. Murray: Mr. Chairman, could I add one other point. Even accepting Mr. Reycraft's stance that they were in constant touch, then I think the question must arise that they allowed the strike to continue for 52 days. They rested that, I think, on the principle that a locally negotiated settlement was preferable. Nobody knew better than they did what the state of negotiations were because the mediator was reporting back constantly and presumably was in constant touch and they had other means of finding out what was going on. One is left then with the conclusion that the Education Relations Commission does not think that a 52-day school strike places students in jeopardy, and if that is the case, then that is a very serious issue that I think this committee needs to examine.

Mr. Reycraft: What is in jeopardy is not the students, not their education. What they look at being jeopardized is the ability of the students to successfully complete courses of study.

Dr. Murray: The question that I would like to get a

definition from somebody, perhaps you or the Education Relations Commission, is at what point in a semestered system does that happen? At the end of the semester when they have been on strike for the whole year? I mean, logically, surely there is some point in the school year at which a student's ability to complete a school year successfully is in jeopardy, because if there is not then there is no point including this in the act.

Mr. Reycraft: Are you suggesting that we should be able to identify a specific number, a specific number of days and that beyond that point a student's credit is in jeopardy and it would not be warranted?

Dr. Murray: I suggested three alternatives, there may be others and I am not wedded to any one. One is to have a trigger point where a jeopardy hearing, a public hearing would be held to enable the issue to be discussed, and I would hope that that would occur with criteria as to what constitutes jeopardy; another is to have a trigger point where an alternative form of final offer selection or arbitration comes into place; or to have a line drawn that after this point we assume, through legislation, that students' programs would be in jeopardy and no strike would be allowed to continue past that point. I think something has to be done.

Mr. Callahan: Can I have a supplementary on that?

The Vice-Chairman: I am not sure. We are way over our time and I still have two more members who want to ask a question. I am going to be rude and I am going to say that Mr. Reycraft is going to have one more question and then I am going to Mr. Lupusella and Mr. Davis and I am not going to recognize any other questions.

Mr. Callahan: That is a good ruling, Mr. Chairman.

Mr. Reycraft: The Chairman has become very arbitrary this morning.

I recognize your concern, Mr. Chairman.

I did want to hear a bit more about this hearing and what form it would take and what it would achieve. Are we going to hear from different sides in the argument? Is that what would happen? Would it just be a repeated series of submissions by parents and students and others who wanted the strike ended? And eventually in such a hearing, I am assuming that somebody has to make a decision, the decision would be whether or not the ability of the students to complete the courses was in jeopardy? I am not sure that we would really achieve anything other than by providing a forum -- it is already available in other areas -- a forum for views to be expressed.

I am sure that once that decision is made there will still be those who will say the commission was wrong or the Ministry was wrong. The impression that we somehow eliminate all of the anxiety and everything that goes with a strike and the impression that that is going to be eliminated by holding a jeopardy hearing, I think that is as mythological as the rumour that a hearing should have been held in Wellington in the first place.

Dr. Benson: Could I make a comment on that? We were continually told that they could not hold jeopardy hearings -- we were told this -- while negotiations were on. But the point is, if the negotiations are meaningless, if the two sides are so far apart, then you can go for week after week after week.

What you were asking, Mr. Reycraft, are tough questions and my answer is that at some point you have to bite the bullet. You say is there a certain number of days? I would say yes, once you put in on the paper what the characteristics of jeopardy are. It may mean that you trigger opening up that school at the end of 40 days, it may be 30 days, but in the wisdom of the proper committee they will have to bite the bullet and say we can't pussyfoot around.

If you take my case, I teach in a university where there is a semester system, I have 13 weeks. I can tell you right now that if we are shut down for six weeks I will say to my student, "You cannot get credit". Otherwise I am perpetuating an educational fraud because I have so much material, so many insights, et cetera. I cannot teach that to him in six weeks.

What I am saying is that the Legislature have to take the same kind of firm attitude and say, yes, there are a certain number of days. Again, given the situation, whether it is elementary or whether it is a semester, of these things, can certainly be brought in. That is your job. What we are saying very strongly is that we have been failed in the fact that you put down legislature that no one can interpret what jeopardy is.

Then you say what about the ERC, how would it work the hearing? There is a very obvious way. Obviously, the force -- I think the momentum will come from the school boards -- the onus would be on them to supply the documentation saying for the following reasons we believe jeopardy should be declared right now to open up the schools. Now if those reasons are bad, a properly constituted committee examining those would say the reasons are false. In this case they did not, they said they are negotiating.

Let me give one final detail and I think this is unique. You may say: How do we know that the negotiations were not meaningful? For a very simple reason, that I was phoned on a Saturday evening in November and asked to be party to these negotiations as one of the chairmen of the committee that were looking at. I went along -- I think at 11 o'clock -- and I saw most of the cards that the teachers were dealing in these confidential negotiations. An hour and a half later I met the board. I was absolutely appalled. The board thought it was being more than generous; derelict in its duty to the taxpayers and the teachers' demands weren't even close to it.

You might say that was my reading of it. Five weeks later the government said exactly the same thing when it saw both and said, "They are so far apart, we are legislating you back." So I viewed that the negotiations were meaningless. And we said publicly in the paper that we were finished with the teachers and the board, and we said we were going to the only place that it was and that was to start putting pressure on the government. I would like to do it again. And if the legislation in the act is left as it is, I would say forget both the teachers and the school board; the only thing is civil disobedience, disrupt this Legislature down here, throw paper, get arrested. It was the only way. While we were wasting our time, we were doing something.

The Vice-Chairman: I think you made your point very well.

Mr. Lupusella?

Mr. Lupusella: Thank you, Mr. Chairman.

I would like to be extremely brief because I really enjoyed the content of the brief and the presentation made before this committee. But at any rate, I would like to bring up to your attention that you do not have to convince us now, after all the hearings that were made before this committee in relation to the principle that students must have the right to education and this principle must be incorporated into Bill 100 as the teachers having the right to strike. I think that if we are going to do that, at least we are going to balance those two principles.

The other thing is that there is a need of having a clear definition of what jeopardy means and at the moment, as far as I am concerned, when I see Bill 100, even though we are going to get in the future a clear definition of what jeopardy means, it is an indication for the Education Relations Commission to act and to call public hearings, and so on. My opinion is that facilitating the process it is going to prolong the situation.

I am not particularly sure if you agree with me that if the Board of Education will have the power after incorporating the principle of what jeopardy means in the act, the Board of Education will have the power to declare the school year in jeopardy because when we have the definition we do not need public hearings any more.

I think that in that way the Education Relations Commission, being instructed by the Board of Education, that commission has to act immediately because at least there is a clear position that the school year is in jeopardy.

Dr. Murray: I think that one of the reasons that the brief argued for a public hearing was to have the school board unilaterally declare the year in jeopardy might well be seen by teachers and others as a negotiating tactic on the part of the board which would be used at its pleasure to try and control the strike. Similarly, the teachers might want to argue that the school year in jeopardy, again as part of a negotiating tactic.

So I think it would be very wrong to have either of the parties to the strike given the power to declare that the school year is in jeopardy. But I do think that it would be instructive to have a public where the parties could present their views on an issue which clearly, if the decision was that jeopardy had occurred, then the strike would have to be declared over. I think that one of the advantages of having a public hearing is exactly that, to have an opportunity for the parties to present their views and other interested elements, obviously students and parents, not to talk, I would hope, on the rights and wrongs of the strike - I think that this is up to the commission and up to the procedure to be set out - but to deal with the specific issue of when jeopardy does occur.

Mr. Lupusella: The reason why I am suggesting that is it seems at the present time there is no balance whatsoever on Bill 100 because when the negotiation is going to break that board is shafted away. I mean, they lost control of the situation. And if you want to take into consideration the principle of the right to strike, the principle of the students to have the right to education, and also to give a definition of the protection about this education with a definition of what jeopardy means, and the board, of course, has to assent the interest of the parents and education of the children and the kids, and so on.

Why do you see such disbalance with my recommendation when in fact it appears to be very balanced?

Dr. Benson: I agree with Dr. Murray that I think, while I sympathize with what you are saying, the school board is a party to the strike; therefore, if we implement what you recommend, it would mean that once they declared

that the education was in fact, in their opinion, in jeopardy, that automatically the strike would be ended. But it seems to me that would be quite wrong. It would need to be an outside one assessing whether in fact the board is, in fact, correct or not, because they want to open the school. So it has to be a third party to be fair to the union.

Mr. Lupusella: I appreciate your comment. The question is that in the course of different presentations made before this committee it was the opinion of the different boards that the whole process from the time when negotiation starts until the strike is called and until a settlement is reached, is too long. I am just wondering how we can make the process shorter?

Thank you.

The Vice-Chairman: Mr. Davis?

Mr. Davis: Thank you, Mr. Chairman.

Thank you gentlemen for coming and sharing with us. I think it is very important that the committee hears from parents who have been involved in and gone through the strike. Jeopardy was certainly one of the questions that was raised constantly by myself and Mr. Johnson and my party. In fact, it was the only party that raised the question of jeopardy.

Perhaps -- not now because I know the time is limited --

Mr. Lupusella: Mr. Ferraro.

Mr. Davis: It was raised by Mr. Ferraro after we raised it.

Mr. Callahan: No, no, no, no, no.

Mr. Davis: Oh, yes, yes, yes, yes. Check the record, Mr. Callahan.

Mr. Callahan: -- he would agree that it was raised in unison --

(Interjection)

Mr. Offer: Mr. Chairman, if you can ask for a clarification as to exactly --

(Interjection)

The Vice-Chairman: Mr. Davis, would you ask your question, please.

Mr. Davis: Yes, I will.

Some of the concepts that you might wish to include, being educators, in the criteria that you would look for to decide whether a student could be placed in jeopardy. As an ex-trustee and very concerned in education, I agree with you. And it was the the point that we kept making that the school system in Wellington County, unlike the strike in 1976 -- the one in Sudbury -- where a very few students were in a semestered school, the majority of your students were in semesters, and there was no way that you could make up that kind of process unless, in effect, the Minister of Education would say that all you need is 60 per cent to get a credit, which may be what he said.

So I would appreciate from an educator some concept, because I think that my colleague, Mary Bryden, has pointed out, it is not so much that we want to define jeopardy so it becomes an end to a strike, but so teachers and parents and students and educators and, yes, legislators, have an understanding of when this could occur and then it could just go through the ERC by, I understand, a process which would say that someone asked the ERC to determine if there is jeopardy, here is the criteria, and the ERC would simply say in our opinion jeopardy does not exist.

I have great difficulty in understanding the Minister of Education -- unlike the Minister in the Sudbury strike who did intervene, by the way, did talk to both parties -- on a Wednesday afternoon in the House say there was no criteria for jeopardy and on Thursday indicate there was, knowing that we had a resolution coming to the House saying order the teachers back to work. And it is a political decision.

My other concern has to do with teachers, community, students and families.

Mr. Reyecraft: Is this a question for the witness?

Mr. Callahan: No, that is a political statement. It sounds like a prepatory for your re-election.

Mr. Davis: I was upset the study did not take place. Could you just comment briefly. Do you think that there should be a definitive number of days that a strike went on? I am going to say, for example, 20 days.

That any strike that existed 20 days or more automatically there would be an external review of the issue on an educational level, on a negotiating level as to why the negotiation process failed and, if it did fail -- and also on an economic and social level the impact that a strike has on the teachers and their families -- do you think that is a worthwhile thing to build data basis with?

Dr. Murray: Yes. This is what we tried to do. Having gone through this strike and having seen the suffering and witnessed all the impact on teachers, on school trustees, on the community, on students, you name it, nobody escaped. We tried after it was over to get some form of study, and I think for very understandable reasons in that particular community people wanted to forget it and they had enough, they suffered long enough, they wanted just to get back to school and do their work. But the sad thing is that we do not have any data from that that would help you and other people to resolve the issue in future. I think that that sort of a suggestion of a review of what led to this would be a very constructive one.

Mr. Davis: The Sudbury report that was done, the study, they were only tracking students going into university and only tracked them for the first year, but did not track any student in grade 9, 10, 11 or 12 who may have been having difficulty anyhow in school and what effect it had on that student.

Dr. Murray: Those are exactly the students that I was most concerned about as an educator. Students who were having difficulty and who may have may dropped out of school. The drop-out rate of students in high school is already too high. I do not know how many students dropped out at Wellington County because of the strike, but I think those are the students who may in the end have suffered most.

Dr. Benson: There is a further point. I might say that unlike in the mid 70s the admission standard to universities have progressively got higher and higher. So again we do not have the hard facts. But if you have lost a semester and you are in grade 13, it would seem to me that that student trying to get into Queen's or whatever, is at a disadvantage when you have got to have 80-or-plus.

Mr. Davis: I do know, and I do stand to be corrected, but I believe in the estimates that we had given to Minister of Education the ERC indicated to us that if the strike had occurred in the second semester, the circumstances may have been different because of, I guess it is the application to university.

Dr. Murray: One of the things that would have been different is that they would not have had the option of extending, as they claimed they did, for the first semester and shortening the both the first and the second semester. Even juggling the existing days without adding any time is not going to solve the problems that a 52-day strike brings.

Mr. Davis: Thank you, Mr. Chairman.

I will not take the political opportunity to point out to my learned friends across the way that they have dropped educational spending by 4 per cent...

The Vice-Chairman: Thank you very much, Mr. Davis. I appreciate you are very concerned with the situation.

I would like to thank, however, Dr. Murray and Dr. Benson for coming. I hope you do not take it as me wanting to be rude to cut these fine gentlemen off, but I think that you had a chance to make your point very well and I think the questions were coming back again at you in a different forum.

I would like to thank you once again for coming.

Dr. Murray: Thank you, Mr. Chairman.

Dr. Benson: Thank you for having us. If we sounded polemical, frankly we are here for a constructive solution, not to attack people.

The Vice-Chairman: I am sure. We understood that. We appreciate it.

Gentlemen, we will be adjourned until tomorrow at 10 o'clock.

The Committee adjourned at 12:59 p.m.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

SCHOOL BOARDS AND TEACHERS COLLECTIVE NEGOTIATIONS ACT

FRIDAY, MARCH 27, 1987

Morning Sitting



STANDING COMMITTEE ON GENERAL GOVERNMENT

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Substitutions:

Callahan, R. V. (Brampton L) for Mr. Fontaine

Davis, W. C. (Scarborough Centre PC) for Mr. Sheppard

Johnson, J. M. (Wellington-Dufferin-Peel PC) for Mr. McCague

Reycraft, D. R. (Middlesex L) for Mr. McKessock

Clerk: Deller, D.

Witnesses:

From the Ontario Public School Trustees' Association:

Campbell, S., President; Trustee, Prince Edward County Board of Education

Jakub, J., Director, Legal and Personnel Services

From the Ontario Separate School Trustees' Association:

Sherlock, J., President; Trustee, Halton Roman Catholic Separate School Board

McCabe, E., Deputy Executive Director

From the Metropolitan Toronto School Board:

Waese, M., Vice-Chairman

Merritt, A., Consultant

Budd, R., Superintendent, Employee Relations

Curtis, N., Superintendent, Employee Relations

From the Etobicoke Board of Education:

Tolton, J., Past Chairman

McVicar, D., Associate Director

Hall, S., Chairman

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GENERAL GOVERNMENT

Friday, March 27, 1987

The Committee met at 10:10 a.m. in Room 228.

CONSIDERATION OF REVIEW OF THE SCHOOL BOARDS AND
TEACHERS COLLECTIVE NEGOTIATIONS ACT
(Continued)

The Vice-Chairman: Good morning ladies and gentlemen, members of the committee. I see a quorum.

I would like to welcome this morning our first presenters. It is a joint presentation between the Ontario Public School Trustees' Association and the Ontario Separate School Trustees' Association. We have Sharon Campbell, President of the Ontario Public School Trustees; John Jakub, Director of Legal and Legal Services.

From the Ontario Separate School Trustees' Association we have James C. Sherlock, President; Earle McCabe, Deputy Executive Director.

Welcome lady and gentlemen, please proceed when you are ready.

Ms. Campbell: Thank you, Mr. Chairman.

Members of the two associations who are present today are Mr. Jim Sherlock who is President of Ontario Separate School Trustees' Association and a trustee of the Halton Roman Catholic Separate School Board; Earle McCabe, Deputy Executive Director of Ontario Separate School Trustees' Association; John Jakub on my right who is the Director of Legal and Personnel Services for Ontario Public School Trustees' Association; and I am Sharon Campbell, President of Ontario Public School Trustees' Association and a trustee from Prince Edward County Board of Education.

Ontario Public School Trustees' Association and the Ontario Separate School Trustees' Association have available two-member boards, co-ordinated bargaining programs with expertise in labour relations. As well, an extensive data research service is available co-operatively to our member boards. Although, occasionally trustees organizations do have differences of opinion, the one issue that is common to all trustees across the province, both public and separate, is the negotiations process.

We are proud to appear before you as a united voice in the education field. We negotiate with almost 22 bargaining units in the school boards across the province, and we are

pleased to be making such an important presentation to you today.

After extensive consultation with school boards throughout Ontario, it is clear that there is widespread dissatisfaction with the negotiation process as currently established under Bill 100, the School Boards and Teachers Collective Negotiations Act. Common among all school boards is the concern that negotiations take too long. It was observed that teacher-school board bargaining takes far longer to reach a collective agreement than does bargaining in the private sector.

In particular, it was felt that the process of fact finding had not been of assistance in reaching a settlement, but rather has tended to produce delays and has contributed to making teacher-school board bargaining a lengthy and frustrating process.

Finally, it was felt that Bill 100 lacks pressure points to encourage settlements by the parties.

As a result of consultation with school boards, the Northern Ontario School Trustees' Association, Ontario Public School Trustees' Association, and the Ontario Separate School Trustees' Association are of the view that it is time to review Bill 100 with the objective of improving the legislation.

The School Trustees' Associations supporting this submission to the Ontario Legislature's Standing Committee on General Government collectively represent over 130 public and separate school boards which provide educational programs and services to over 1.1 million students. The school board is represented by associations negotiating with one or more of the five teacher federations established under Bill 100.

The positions and views of school trustees contained in this submission reflect a broad consensus among school boards on the reasons and ways Bill 100 should be changed. The School Trustees Associations are very pleased to be part of a Legislature review of Bill 100, which we believe is a necessary and important first step in a process that hopefully will lead to some positive improvements in the legislation.

Mr. Sherlock: Mr. Chairman, page 2 involves our recommended model in point form and the commentary that follows provides rationale, and with your indulgence I would like to quickly read that into the record.

The recommended model: (1) notice to bargain must be delivered by January 15th; (2) negotiations commence (teachers must deliver their initial brief on or before

February 15th; (3) April 30th - mediator appointed if there is no settlement; (4) teachers must vote on the school board's final offer no later than October 1st. The teachers can set the date of the final offer vote which shall not be later than October 1st. Two weeks prior to the date set for the vote, the Board shall deliver its final offer to the teachers; (5) if no settlement is reached or the teachers do not accept the school board's final offer, a full withdrawal of services will commence on the fifth day following the vote; (6) the full withdrawal of services will continue until either a settlement is reached or jeopardy is publicly declared by the Education Relation Commission and the government acts to terminate the withdrawal of services.

The rationale for (1), notice to bargain must be delivered by January 15th. Under the present Bill 100, notice to bargain must be delivered in January. In some cases this change will move up the commencement of bargaining by two weeks.

Point (2): Teachers must deliver their initial brief on or before February 15th.

This was raised as a significant concern by school boards. School boards were often in the position of not receiving any proposal from the teachers until May and even June after having an initial meeting in January or February. This makes it very difficult to negotiate a collective agreement prior to the end of June.

Identifying the issues early on would let meaningful negotiations begin in the year so that full discussions and debates of the issues could take place prior to the end of June in order to have an agreement settled for September 1st.

Point (3): Mediator to be appointed by April 30th.

Mediation was generally felt to be a useful process. The new model would make mediation compulsory if there is no agreement by April 30th. Mediation is not mandatory under the present Bill 100.

It was felt that by April 30th the party have had ample opportunity to negotiate an agreement on their own. In addition, the parties would have the assistance of a mediator for the entire period of the summer if this is necessary.

It should be noted that given this fixed time line for the appointment of a mediator, there will be a heavy requirement for mediators at the Education Relations Commission. A great deal of care will have to be taken by the ERC to ensure that the required number of quality mediators is available.

Points (4), (5) and (6): The teachers must vote on the school board's final offer no later than October 1st, and if the final offer is not accepted a full withdrawal of services begins on the fifth day following the vote. The strike will continue until a settlement is agreed to by the parties.

It was felt that the current process of negotiations allows both parties to drift through the process with little pressure being exerted. The recommended process will put extreme pressure on both parties to reach an agreement.

The strike that takes place will be a full strike and not a work-to-rule. Any action less than a full withdrawal of services will be deemed to be acceptance of the board's final offer.

The inclusion of the October 1st deadline in the model should encourage boards and teachers to reach a negotiated settlement prior to a final offer vote. In addition, it will put a great deal of pressure on the board to ensure that the final offer is reasonable.

A strike at this time of the year would minimize harm to the students.

The full withdrawal of services would continue until a settlement is reached. The parties would be free to continue negotiation meetings and to avail themselves to the assistance of a mediator. If agreed to by both parties, the matter could be resolved by sending the outstanding issues to arbitration or to final offer selection.

Parties should be free to develop their own rules for final offer selection and specifically should be entitled to allow issue by issue final offer selection. Under the present rules for final offer selection, the total position of one of the parties on all the issues must be accepted. The process could allow for selection of positions on an issue by issue basis. This, it was felt, may make final offer selection a more acceptable alternative to arbitration.

Ms. Campbell: The Education Relations Commission should be charged with the responsibility to monitor strikes and to report when there is jeopardy. While not wanting to dictate to the commission when jeopardy has occurred, it is hoped that the Education Relations Commission would develop rules and guidelines to be followed when making a judgment as to jeopardy. At present, the procedure is far too ad hoc. It is felt that guidelines by Education Relations Commission with respect to when the commission will test to see if there is jeopardy (e.g. after 30 days, after 45 days) and what factors they will look at in coming to their

conclusion would assist not only the commission but also the parties to have a better appreciation of when and if jeopardy may be declared.

Once jeopardy has been declared, it is understood that the government may deem it necessary to take action to end the strike throughout legislation.

School boards remain very concerned with the consequences of strike action on students. Consideration has been given to recommending that any time lost due to a strike be made up by having school continue past the end of June for a time equal to the time lost due to the strike. However, to suggest that in situations where jeopardy has been declared, the extra days be made up by continuing past the traditional school ending in June was seen as reasonable by school boards. The rationale being that once jeopardy is declared, it is critical the students make up lost time.

Finally, the associations urge that the Minister of Education undertake a summary of the effect of teacher strikes on students.

In conclusion, the views of the associations with respect to improving Bill 100 have two themes. The first is that negotiations must become more time efficient. Under the present Bill 100 things dragged on for far too long. A settlement preferably before the school year commences, but no later than October 1st must be the prime objective of any new process. The new process suggested puts a greater pressure on the parties to achieve this objective.

The second is that fact finding had outlived its usefulness. While the associations felt that, in general, fact finding hindered the process more than it helped, it was acknowledged there may be circumstance where it is of benefit to the parties. It should certainly not be a mandatory process under Bill 100. It should remain, however, as an option available if both parties to the negotiations request it.

To underline the importance of our feelings about fact finding, I would like to ask John Jakub to make a final note about it.

Mr. Jakub: Thank you, Mr. Chairman.

I would just like to take a few moments and really highlight a very important aspect of our brief, and that part deals with our very serious reservations about the role of fact finding as it presently exists under Bill 100.

Concerns about the fact finding process have existed for some time now, and I just like to read for a minute from the opinion of John Crispo in the Matthew Commission Report.

Now, this happened to be a dissenting opinion on the role of fact finding, but I think it is very important that we hear his comments.

I have several inter-related reasons for opposing my colleagues' recommendation on fact finding. My basic concern is that not enough reliance is placed on mediation under Bill 100. Experience with mediation in virtually all Canadian and free world jurisdictions reveals it to be by far the most effective third party technique for resolving labour management disputes. Under Bill 100 mediation is a much neglected technique. Moreover, after fact finding, mediation has been brought into play in roughly half the cases. These statistics really speak for themselves. Mediation is under-utilized before fact finding, when it could be most effective and then heavily relied upon after fact finding to help bail out the process.

I would make mediation the only mandatory form of third party intervention before a strike or lock-out takes place. I would not follow it with automatic or compulsory fact finding because that would tend to undermine it. After all, it stands to reason, and experience reveals, that if both parties know that any other form of third party intervention is going to follow mediation, they will tend to hold back in the hope that they may do even better at a later stage.

As for my colleague's concern about the public right to know, I would leave it to the mediators to spell out the final position of the parties if he or she cannot resolve their differences, since the public pays little or no attention to the facts in these cases. In any event, I am not as preoccupied as they are to have the judgment of so-called independent and objective third parties put before the public before there is a real problem.

My final point is that fact finding is becoming part of a protracted ritual dance under Bill 100. This becomes especially apparent in those cases where mediation takes place both before and after fact finding. Fact finding could play a much more useful role under Bill 100, but only if both parties want it or the ERC deems it appropriate after they have become embroiled in a dispute. That is why I so recommend.

Accordingly, as I already indicated, mediation would become the only automatic or compulsory process before work stoppage could occur. By implication and inference this decenting set of viewpoints also leads me to depart from the commission's recommendations on number of minor, ancillary, unrelated points.

I just bring that to your attention in order to say that the concerns about fact finding have been in existence

for some time, and I think since the Matthews Commission have only been highlighted. In our opinion, fact finding stalls the process in most instances and it diverts the attention of parties from working towards a settlement. The parties spend more time posturing for a fact finder's report instead of preparing themselves for negotiations.

There are, however, exceptions. Fact finding has been of assistance in a number of jurisdictions. It should, therefore, be available to the parties if both the parties should request. It should, however, as was indicated in our brief, not be a mandatory step in the process.

Thank you.

The Vice-Chairman: Thank you very much. We are going to proceed with questions if it is okay with you.

Mr. Johnson?

Mr. Johnson: Thank you, Mr. Chairman. You maintain that fact finding should remain on option but only if both parties request it.

What about mediation, should it come in at the request of one or the other or two should be requestable parties?

Mr. Jakub: We propose that mediation would be a mandatory step in the process. So that at some point in time if there is not a settlement you must have a mediator imposed. But we would see that mediation could occur prior to that time if the parties so requested.

Mr. Johnson: Who would call the time slot?

Mr. Jakub: Under our proposal, mediation must occur by April the 30th. If the parties themselves wanted a mediator prior to that time then they could certainly request one.

Mr. Johnson: By April the 30th it would be mandatory?

Mr. Jakub: That is correct.

Mr. Johnson: Could we deal with the ERC. We had some serious discussion yesterday pertaining to the rule, and I understand at the present time there is no process for requesting jeopardy hearings if the Education Relation Commission decides there is no need for a hearing?

Mr. Jakub: If I can go back to what our proposal on jeopardy is. We have some concerns that the issue of jeopardy is one that is not, perhaps, dealt with firmly enough. The ERC has a tremendous amount of discretion, and while we are not suggesting that that be taken away in any

way, there should be some guidance, perhaps, in the way of some internal rules as when the ERC will actually look at the whole question of jeopardy.

Mr. Johnson: In the Wellington strike a few years ago, which lasted 52 late days, the board requested the jeopardy hearing as of November 1st. Again, November the 12th before provincial members involved requested it as well. The ERC denied the hearing; it never did occur.

At what point in time do you feel that it should trigger in?

Mr. Sherlock: I think under the model that we are suggesting, because of the tightened time lines, that the Wellington situation couldn't occur again. October 1st would really be a deadline for a settlement and the jeopardy question is one that is, by and large, beyond our control. We have, I think, the same concerns as the four members in Wellington about not having the education of the students threatened. It is something that perhaps your committee can deal with.

Mr. Johnson: I would hope that the committee would address the problem. The commission does not have to respond to requests of a jeopardy hearing. The terms of reference are very loose, to say the least.

Mr. Sherlock: We have not specifically addressed the point in our brief. We do feel, as I say, the compact time lines here are hopefully going to remove the prolonged negotiations which lead to strikes late in the school year and prolonged strikes which could bring on the jeopardy situation. Our feeling is that this model would greatly alleviate those possibilities.

Ms. Campbell: Page 4 and 5, the bottom of page 4 and the top of page 5 in our brief we have suggested that one of the things that should be more specific is a time for testing jeopardy. There needs to be a definite time set when boards and teachers can expect that there will be a test done. That is one the things that we need to put in place.

Mr. Johnson: Should there not be a mechanism that the parties involved should have a little more say in requesting a hearing, that the commission at least has to explain to them why they feel that it is unnecessary; for example, the parents?

Ms. Campbell: Yes. The parents, certainly in a strike situation where education is in jeopardy for their children, make their feelings known. We have all read the newspaper reports and seen the media reports about that kind of thing. I think they feel that one of the main ways that

their views are made known is to their trustees who represent them. I think that it goes to what we were just discussing, there must be a better process than from the trustees to interpret that to ERC and demand a jeopardy hearing.

Mr. Johnson: The last question. You state: "The associations urge that the Minister of Education undertake a study of the effect of teachers strikes on students."

The Wellington Board also requested on February the 2nd that the Minister of Education do a study or have a study conducted on a strike and the Minister is not deemed wise to do so. Your feeling is that a study would be beneficial?

Ms. Campbell: It certainly would be. I think it would be beneficial to the parties involved in negotiations; that is, the teachers and the school boards, and it would also be beneficial for public knowledge.

Mr. Johnson: Thank you, Mr. Chairman.

The Vice-Chairman: Mr. Allen?

Mr. Allen: Thank you very much, Mr. Chairman.

The frequency with which we meet each other underlines once again the importance of us having a legislative select committee on education matters. It simply goes on and on, and I expect that it would continue to be --

I am very pleased to have your brief and also to have the joint submission because it does give a kind of asserting of views which helps us greatly. We have had, of course, some boards before us individually and also the association of large school boards as well. While there obviously is a considerable agreement around questions of shortening the process, there has been quite a variety of suggestions as to how you do that and a variety of time lines that have been proposed, and it is the latter that I want to ask you about first.

I note, for example, that you allow more time between the establishment of the mediator and the last date for voting on the board's final offer than you do for the actual negotiations themselves that lead up to the appointment of the mediator. Was that a conscious decision, and could you explain that balance for us?

As someone not involved in the process, I appreciate knowing whether it is more important to have more time in negotiation than in mediation normally, and whether it was a deliberate decision on your part to strike that time balance or not?

Mr. McCabe: I think, if I might, Mr. Chairman, in replying to Dr. Allen, Item (1) in the current procedure probably is the only set of negotiations within a given spirit, it goes on the province where we have a three month hiatus, mid June to mid September. We would envisage that if you want to be involved either as a teacher negotiator or trustee negotiator that you be prepared to work in July and August. That is a part of our tightening up. The date is flexible.

I think we can work within anything that is reasonable that will reduce that, but part of the rationale was that the teachers have got to be seen to have some choice in the process and in this part of it they would set the date on which the vote would take place. We felt it reasonable that we afford an opportunity for September negotiations.

Further, we would have to deliver our final and best offer, and I look upon that as something on the order or the nature or the submission one would make to the final offer selector, that should be pretty hard to turn down. So I think with responsible negotiation throughout that period of February through to the end of August, possibly the first two weeks of September, then the vote, I think, we have a greater opportunity for avoiding the rancor between staff.

Just thinking in terms of the York region RCS one, and a quote from yesterday's star. It is a quote from the teacher negotiator, Mr. Jarvis: "Relations between the teachers and the Board deteriorated during the long prolonged dispute."

I think that is a part of our process in our proposal to you to tighten that up and avoid those situations. It inhibits the purpose for which we are both here.

Mr. Allen: A board yesterday proposed starting later with about the same kind of terminal dates that you have, and I presume that was because so little happens often early in the process. But if I am hearing you correctly you are saying that the hiatus that occurs through the June, July, August area really does not make that proposal a very viable one unless you could be absolutely certain of attaching those three months actively into the process. Is that correct?

Ms. Campbell: I think as well, we have recommended as recommendations 1 and 2 that the whole process begin more quickly. As it is now, notice of bargain is given in January. It may be two or three months before the actual proposals come before the school boards and then the proposals are exchanged back and forth. So we are really concerned that the tightening up take place not only at the end, but also at the beginning in the process.

Just to elaborate on what Earle had said, during the whole negotiations process in the school system, so much of the resources of that system just zero in on the process, so much time and energy that we feel so strongly that it needs to be shortened. The mechanics of bringing together particularly the teachers during the summertime to discuss and vote on proposals that may have been made, even though negotiations are carrying on during June, July and August, mechanics of getting together are sometimes difficult. That is why we felt a time that allowed school to have begun again and everyone to be back in place, so to speak, would be a greater degree of fairness to keep people up to date over what may have happened over the summertime. So that is why we are suggesting October 1st.

Mr. Sherlock: Excuse me, Dr. Allen, if I could comment as well. You are concerned about a short period for negotiations. Very experienced labour relations specialists has said that the two-step key to fast negotiations is to start late and tell the whole truth quickly. In my experience over many years of teacher negotiations has been that the prolonged process really encourages a lot of time spent not negotiating with outside limit starting position and very minimal incremental changes towards the middle position where people agree.

The true negotiations frequently occur in a period of two or three days, and when people set their mind to it and a trend is established, that is all the time it takes.

So I think that the period that we are proposing is more than adequate if negotiations are really taking place.

Mr. Allen: I am interested in your two or three days because somebody yesterday waved a very thick book at us to illustrate all of the issues and subject matters that come up for negotiation, and one really had the impression that perhaps it was almost impossible to get through that kind of list in any reasonable length of time.

Mr. Sherlock: Sometimes there is an attempt to rewrite the entire collective agreement every year and, you know, get what you can.

Mr. Allen: If I may observe, your brief I think is quite moderate in its approach. You are running the middle line, for example, a bit on fact finding. We, of course, have had a number of briefs that propose just simply to eliminate the fact finder period, and it is interesting for us to note that you do see the odd occasion there are uses for that and we should not, therefore, throw the baby out with the bath water, but find a better way to use it to the benefit of all parties.

There are a number of items that you do not refer to

that have come up in our discussions, and I presume it is deliberate on your part, so let me ask you because I think the reasoning why you may not have included them would help us in our evaluation of the proposes that we have heard from other boards and teachers groups.

I notice, for example, that you are not proposing that there be any change in a board's opportunity for lock-out. We have had, as you would, I think, expect a number of boards propose to us that the lock-out should attach to the board's powers the moment that the teachers are in a legal position to strike. Did you deliberately leave that as it is in the act and, if so, why?

Mr. Sherlock: Again, I agree with you that we are taking a moderate approach. We have not tried to recommend changes in basic principle. We think that it is hard to argue with the track record of Bill 100 with respect to overall delivery of collective agreements, aside from the frustration of prolonged negotiations.

So we are not suggesting to the committee that the basic principles be changed, but that the process be tightened up; and we feel that that would be the best way to improve the current legislation.

Ms. Campbell: Just further to that, it is the process that we are addressing. The process of both parties in the whole negotiations and we feel that it needs to be made better for both of us.

Mr. Allen: I think some other parties said that the process might be toughened up by changing some of the particulars, too, and I notice that you did say something about improving the pressure points. I guess there is some disagreement as to what pressure points are more effective than others.

I had a sense after our discussion about lock-outs yesterday that there was a disposition to think after all that perhaps it would never be used, why would anyone do that and get themselves into that bad public relations situation and, therefore, it wasn't perhaps as useful a proposal after all.

There was also a proposal that the strike period itself be defined and limited. That was proposed to us, that there be a 30-day strike period and at the end of the strike then -- I am not quite sure what was intended to happen, the system would have to be closed down or whatever by some other third party. But do you see any merit at all in the concept of a closed strike period, or is it something to you that would be quite unproductive?

Mr. McCabe: I think, Mr. Chairman, if I might, that

would defeat the purpose because if you are going to set up that you can serve notice in January, you get to an offer when you get to it, September when they get a fact finder appointed, you will have fact finding and then mediation, now a thirty-day strike; you have created another parameter to which we can go. To go on strike, we know that we are not going to be out more than 30 days. I think that is a wrong attitude to be entering upon a strike. If you entering upon a strike, you are there on principle and you are prepared to stay until you have made your point.

I am just quickly looking over some stats in that respect. In the vast majority -- I don't think I can get more than -- I am guessing here, I am subject to correction, sir -- but more than about five or six strikes going back to '75 that have lasted in excess of 30 days. So then I have to say where did the 30 days come back from? There was only four or five that would be on that, the others resolved in advance. Would they have resolved had they known that after 30 days they were going back to work? I would feel very uneasy with that nature of a premise.

Mr. Allen: That is an interesting response, because I think some of us felt that it would be tempting the length of strikes to lengthen rather than to shorten.

I think those are my main questions, Mr. Chairman, and I thank the representatives very much for coming and responding so helpfully.

The Vice-Chairman: Mrs. Bryden?

Ms. Bryden: Thank you, Mr. Chairman.

I am very pleased that the trustees did come before us as a joint group because we wouldn't have the full picture without you here.

Can you tell me how many boards are in your association and how many are not? Do you represent practically all the boards as trustees in Ontario?

Ms. Campbell: Ontario Trustees' Association represents 57 public school boards across the province.

Mr. Sherlock: Our association have all of our member boards participating in the association, 53.

Ms. Bryden: How much, roughly, are not in any of your associations?

Mr. McCabe: In our case, there are only about five or six very first language French boards, otherwise every RCS board is a member of our association.

Ms. Campbell: As well, although we don't have representation in person from the Northern Ontario School Trustees' Association, they are also members of this brief; and the two associations, ourselves and Northern, there are, I believe, only 11 public school boards in the province who do not belong to either Northern Ontario or OPSTA.

Ms. Bryden: So you speak for a very large group. The one area that I wanted to ask a question on was your proposal that perhaps lost time when jeopardy has been declared should be made up in some way or other, possibly into the vacation period.

How would that be financed? Would it have to come entirely out of school board funds? Presumably, you do make savings when the teachers are on strike? But there may be lost time to work-to-rule and there may be other people who were not involved in the strike who would have to come back during the vacation period. How would that be financed? Would you expect some provincial grants, for example, for the lost time?

Mr. Sherlock: I would suspect, as you have indicated, that the boards in setting their budgets have established a mill rate on the local ratepayers and that part of the revenue remains intact. Part of the government grant related to teachers' salaries during the period of the strike would not be paid at that time, but if those teaching days were made up it would simply be the same grant being restored.

Ms. Bryden: So that you would not have to get an extra grant from the province?

Mr. Sherlock: I don't think there would be any changes.

Ms. Bryden: The only thing that bothered me with some of the long strikes, there might be no vacation at all?

Ms. Campbell: I suppose that is true.

Ms. Bryden: Thank you, Mr. Chairman.

Mr. McCabe: Then maybe the strike was the vacation.

The Vice-Chairman: Mr. Callahan?

Mr. Callahan: I want to address a couple of items. I notice that you are suggesting, as has been suggested by others, that a certain time frame would be prime facie jeopardy and the hearings would start. It is probably a good way of trying to trigger it so it is not sort of left hanging out in the air without a definite period when you would start the jeopardy going. Do you not see that as

adding to the process?

I mean, I found in my former life in practising law that if they have 10 days to file a Statement of Defence, the Statement of Defence was filed on the 10th day; if you enlarge that to 20, it would be done on the 20th. That is my concern about a definitive period being suggested of 30 days or 45 days, et cetera, that you suggest on page 5.

Mr. Sherlock: Overall, though, I believe that the package of recommendations that we are making really tightens up the process. Under the current legislation it can be much more protracted than what we are suggesting in the process we are recommending.

Mr. Callahan: I appreciate that in the present situation, but let me suggest as an alternative that within the process -- and I am assuming that this whole process at the focal point of that process is the best interest of the children. I would hope that would be the --

Mr. Sherlock: We certainly agree with that.

Mr. Callahan: In the main that is the desire, but sometimes because you are taking a process that really works well within the economic or the business climate and you are injecting into an area where you have that additional commodity and the focal point, the best interest of the children, perhaps it would be better to have a principle that is applied by the courts when they deal with the questions of custody or access or anything with relation to children; that they put themselves in the position of being pater patrion of that child and the interests of the parents are irrelevant, and the court itself makes the determination as to whether or not the facts say that what is going on is not in the best interests of the children.

If that type of a concept was introduced into the act in order to trigger the jeopardy, would that not be better than the time frame that you are talking about?

Ms. Campbell: What we have suggested is not a time frame to trigger the jeopardy, but rather a time frame to test whether or not there is jeopardy, and I think the two could be quite different.

Mr. Callahan: In essence what it is doing is it is making the jeopardy consideration to come into play, and what I am suggesting is that nowhere in the act do I see anything definitively that says that the best interests of the children is the primary concern. There is nothing specifically in the act that says that. All it does is really give you an act which is analogous to a labour relations process in the commercial world.

Mr. Sherlock: I think we absolutely accept the basic premise of what you are saying and would be open to anything that the committee might do to implement your objective.

Mr. Callahan: Okay. The second thing that you have suggested at page 3, and it has been suggested by other groups, that the time frame for carrying all of this out, the protracted. And what concerns me is by setting up rules to protract it, are you not, in fact, allowing both parties the opportunity to say - well, because nothing has to be done until that specific date we can just muddle around or whatever or continue to carry on maybe useful, maybe useless activities during that period of time?

Mr. Sherlock: Under the existing situation, this year we have in our own system strikes or threatened strikes coming up after the winter break that really do threaten the school year for the children. In the model we are proposing that would not happen.

I am not sure I understand the point you are making about protracting. Our overall model, really --

Mr. Callahan: Is beyond that.

Mr. Sherlock: Exactly.

Mr. Callahan: I appreciate that. I recognize that that possibility is in the act, but by substituting an alternative, I gather, as Dr. Allen said, you are trying to come up with something that is acceptable to both sides.

Do you not see, though, that by putting definite time periods on it that it might encourage parties to go to that bitter end?

Ms. Campbell: The recommendations that we have made do specify times at which the process would come to an end if there had not been any agreement reached by the beginning of October. As it is now, the only times really that have any significance is the September 1st date for fact finding, which doesn't mean very much, in fact.

We feel that there has to be due time to come to an agreement between the two parties to duly discuss the issues and try to reach an agreement, but we want to see an end to it, a definite end to that process.

Mr. McCabe: Looking at the current situation, if I might, Mr. Chairman. At the present time the teachers can request the board's final offer and have the ERC conduct a vote, a supervised vote, generally presided over by a federal or provincial returning officer. They could at the same time hold a strike vote or, ultimately, they could hold those as separate votes and separate dates. They could have

a strike vote, vote in favour of the strike and wait 60, 70, 80 days before fixing the date of the strike. That is the problem in the current situation, that it goes on indefinitely.

Consider the two strikes we have had this year in the separate school system in Windsor and the Soo. Those boards have taken 15 months to achieve -- the teachers and the boards there -- 15 months to achieve an agreement that is already expired. So under this proposal you would have the teachers fixing the date, but not later than October the 1st, and we must deliver the offer. I think you will get a much better control under this proposal.

Mr. Callahan: I quite agree. But let me try this one on you. It may be totally unworkable, but it would seem to me that both from the standpoint of trustees and also from the standpoint of teachers that if the matter intrudes into the first semester, let's take a semestered situation -- and I never been able to understand why semesters are etched in stone that they have to run from September to Christmas and then Christmas break to the end of the year, surely there is flexibility enough that if the two parties realize that if they protracted then, in fact, there would be a change of the school year -- they would have to go for the first semester into the new year and then from the new year into the latter part of the summer, and that would mean that the parties negotiating would have to recognize that they are not going to be guaranteed that three-month break at the end of the second semester.

Our school systems, in my mind, have always been somewhat unusual in that we have -- I guess, the farming element that we had to get everybody out for the summer so that they can bring in the crops produced a stereotype situation where no one could possibly go to school during the summer, and that has all the additional benefits or detriments that you have with schools sitting there that millions of dollars have been paid for and are not used at all during the summer.

What I am saying is, if there was a component in here that if you want to negotiate, fine, go ahead and negotiate, but recognizing the salient and basic and major principle of the childrens' best interests, that if you do that that year is going to be done but not in a protracted fashion; it is going to be carried on, perhaps, into the holiday, the proposed holiday of perhaps the trustees and the teacher.

Mr. Sherlock: The point of fact, I believe most semestering systems actually run through until the end of January. I think we would also agree with you that the school year is something that should be looked at, but perhaps by another committee.

Mr. Callahan: All I am thinking, and I am not trying to be one sided on this because I can see that there has to be a relationship between the teaching profession and the boards.

I think in the main teachers want to see that the interests of the children are adequately represented and that they do in fact get a correct educational opportunity. But if you really believe in putting the child's interest first, then if the process continues, either as you have suggested -- and I think even going into the October can have a significant impact on a child's education -- why not put a provision there that if you want to delay it, delay it at the parallel of getting out on June 30th or whatever the date is.

Ms. Campbell: In fact, I believe that is what we are recommending.

Mr. Callahan: I am sorry, I didn't read it that way.

Ms. Campbell: On page 5 we are suggesting that time that is lost during the school year should be made up during the school year, and I believe that is what you are saying.

Mr. Callahan: Okay.

Ms. Campbell: Yes, from the time that has been traditional school year time. If a portion of that traditional school year time is lost, then it should be made at some other time in the year, and I believe that is what you are saying.

Mr. Callahan: Yes. That is right. I am sorry I did not see it. I think it is a good idea because in fact it does put the emphasis on the best interests of the child. If we adults want to continue to negotiate, so be it; but it does not interfere with the young people and all it does is sort of readjust the school year.

Ms. Campbell: Exactly.

Mr. Callahan: Just one final item.

Mr. Allen: Mr. Chairman, may I have a supplementary on that? A very brief one.

The Vice-Chairman: Sure.

Mr. Allen: I think it would be helpful for the committee to hear your views on this. We often think of the jeopardy the children are in in terms of whole semesters or in terms of whole years, and with (a) the amount of individualized instruction that takes place with children even in the elementary school at different levels of

progress, and what-have-you, in many respects of their own time insofar as that is possible; and secondly, in the secondary system where we have got a credit system in place.

Isn't it better to think in terms of the jeopardy in terms of the smaller units, some part of which might be lost or there might be some retardation in them so that you might lose a credit but you do not lose a semester, like, there are two credits but you do not lose the year? The scale of class that we are talking about is really much more adjustable in the system than if we just simply have locked in your minds that we are talking about whole semesters or whole years lost. Can you comment on that?

Ms. Campbell: I think that is true because there now is a great deal of flexibility in programming in this school for individual students, and that is probably true. We do not think any longer, in most instances anyway, in terms of a whole ten-month school year. There are break up points in that year. I think what you have said is very true.

Mr. Callahan: This very quickly is the final question, and I have asked this of most of the delegations that come forward. Recognizing the trustees are politically elected, and I guess similarly to a city council where the mill rate is set and the staff have brought in their budgets and they tell the staff, they say - this is the mill rate we want. They tell the staff to go back and pare down all of their budgets to achieve that end so that they can -- let's be realistic -- look good to the people who are going to vote for them.

Do you find from your experience, particularly today, probably more important today because I have seen municipalities now saying because they collect the taxes for the school board they are cutting it out and showing just exactly what the school board's mill rate or contribution of the mill rate is. In fact, in my community there were suggestions, and I think maybe even in other communities, that the school board collect their own taxes because the city council members feel they are getting hung on the basis of the total package.

The gist of the question, the question I have asked before is: Do you see or has your experience demonstrated to you that this has been a difficult situation and perhaps an impediment to trustees being able to negotiate a little differently or to really get involved in negotiations without looking at that end product, the political accountability?

I go back to the days when trustees used to serve free and nobody had to run for the election, the jobs were up for grabs. Today they are very much more politically attractive and people are in fact running and you have great gobs of

candidates running for them. Do you see any difficulties in all of those?

Mr. Sherlock: In many parts of the province trustees still almost work for free.

Mr. McCabe: Almost.

Mr. Sherlock: Just as you have stated that your interest is primarily the welfare of the child; that is more of interest than looking good to the ratepayers.

Mr. Callahan: So the answer to my question is no.

The Vice-Chairman: Mr. Davis?

Mr. McCabe: I think, if I might, you as a councillor among other things in considering the tax rate, you also want to make sure services were being delivered. You were not solely interested in the tax rate. We, too, must deliver services to children and that is the main reason we are there. This is another part of the process of our trusteeship.

The Vice-Chairman: Mr. Davis?

Ms. Campbell: Just further --

The Vice-Chairman: I am sorry.

Ms. Campbell: If I might. Yes, being a trustee involves many, many things and the major interest for trustees is to provide the best possible education that we can for the students within each of our systems. But that has to, at some point, be balanced by the recognition that staff members do have rights and that we are accountable to the taxpayers for the monies that we spend on their behalf.

Mr. Callahan: Okay. Thank you.

The Vice-Chairman: Now, Mr. Davis.

Mr. Davis: Mr. Chairman.

I told Mr. Callahan that yesterday but he did not believe me.

In your process, your negotiations, you say the teachers must provide their initial brief before February the 15th. The Matthew reports suggests, and I would like your comment on it, that both parties must deliver the areas in which they are going to negotiate on a given date, and I think it was the 15th of February. How do you feel about that, that both parties have to put it in?

Mr. Sherlock: --would be able to do it. There are some boards now who volunteer their exchange proposals. It is not commonplace. The usual is for the teachers to present their changes to the collective agreement. I think we would be very open to that idea. It is not something that we have dealt with specifically.

Mr. Davis: I appreciate the way in which the trustee organizations represented by your body suggest we take a look at jeopardy, and that is to try and somehow in an ad hoc way develop some kind of guidelines which I think are important, and certainly on behalf of my party we will be processing something to look at jeopardy. I think it is imperative that we at least have some ideas and the boards have ideas and the teacher federations have ideas as well, so that we can look at the welfare of the students as we go through the system.

Thank you.

The Vice-Chairman: Can I have your comment on the situation of two jobs in regards to the principals and vice-principals in the schools? Others have mentioned that they should not be part of the federation, others have mentioned that they should. What are your views?

Ms. Campbell: Although this is not in our joint presentation, the view of OPSTA is that principals and vice-principals should not be part of the branch affiliates of the federations. Particularly in a strike situation, these people are managers of our schools and they are required to be at the school, and it is a very difficult position to be in as a manager at the school and yet still belong to the branch affiliate which might be picketing outside your door.

Mr. McCabe: As far as our association is concerned, Mr. Chairman, we have not surveyed the membership on that very point. Since the preparation of the Ravel Commission Report, to that end, and at that time it was split both 50/50. There are those who would support the principals and vice-principals remaining in the unit; they feel that they are helpful and a mediating force in the overall situation. Others take the position they are management and, therefore, should not be in. Our position has not been altered by other surveys on that topic.

The Vice-Chairman: Thank you very much. Are there any other comments?

Would you like to make a last comment?

Ms. Campbell: Other than to thank you for the opportunity to appear before you.

The Vice-Chairman: We are thanking you both for appearing before us and giving us your views and your brief.

Thank you very much.

Our next presenters are from the Metro Toronto School Board. We have Ronald K. Budd, Superintendent of Employee Relations; Nicholas J. Curtis, Superintendent of Employee Relations; Al S. Merritt, Consultant and Chief Negotiator; Mae Waese, Vice-Chairman of the Board.

Welcome.

If somebody would like to introduce everybody so that we would know which one of you you are.

Ms. Waese: All right. I am Mae Waese, Vice-Chairman of Metropolitan Toronto School Board; to my right is Mr. Ron Budd, Employee Relations, Superintendent; to my left is Al Merritt, our Consultant; and to his left Mr. Nick Curtis, Superintendent of Employee Relations.

Mr. Chairman: Welcome to the General Government Committee. Proceed whenever you are ready.

Ms. Waese: Thank you.

Mr. Chairman, Members of the Standing Committee, it is indeed a pleasure for us to have this opportunity to present the views of the Metropolitan Toronto School Board in relation to the School Board and Teachers Collective Negotiations Act. (It is often referred to as Bill 100 and hereafter abbreviated in our presentation as the Negotiations Act.) We at the Metropolitan Toronto School Board believe that the need to look at the Negotiations Act with a critical eye is long overdue, and we are very hopeful that the Standing Committee will be recommending changes for implementation.

As you know, the Metropolitan Toronto School Board has within its jurisdiction over 270,000 students and 16,000 teachers, both elementary and secondary. This comprises nearly 22 per cent of the student and teacher population of the Province of Ontario. Naturally, then, since we represent such a large percentage of people who are vitally effected by the act, we feel that the we have a rather large stake in any changes that might be made.

As a matter of fact, the negotiations of collective agreements with our teachers has been seen as being of such a critical and important nature that amendment to the Municipality of Metropolitan Toronto Act (commonly known as Bill 127) has been put in place to regulate and set out how negotiations in Metropolitan Toronto should be conducted. This act enjoins that all such boards and the branch

affiliates must negotiate jointly in regard to all major matters such as money, staffing, and employee benefits. This act also refers in a number of places to the Negotiations Act; consequently, any changes in the Negotiations Act could have an even greater influence on the Metropolitan Toronto boards than it may have on boards elsewhere.

Mr. Chairman, could I also say that we feel that there is much in the Negotiations Act that is very good and should not be changed. However, as you are aware, Mr. Chairman, there are sections of the Negotiations Act which have come in for serious criticism. It is the belief of the Metropolitan Toronto School Board that our brief which we will be presenting this morning will not only deal with the problem areas of the act, but will also make recommendations which will, if enacted, make the act as valuable in teacher bargaining as the original architects of Bill 100 hoped it would be.

I will now call on our representatives, Mr. Budd, Mr. Merritt and Mr. Curtis to present the brief. I would like to begin with Mr. Merritt.

Mr. Merritt: Thank you Mrs. Waese.

Mr. Chairman, ladies and gentlemen, as you are no doubt well aware, one of the most common and serious criticisms of the School Board and Teachers Collective Negotiations Act is that it allows negotiations to continue for an inordinate period of time which is costly in both money and time. Data from the Education Relations Commission publication "A Provincial Overview" - November '83 shows that for the school years 1976-77 through to 1982-83 the average length of negotiations ranged from a low of 7.4 months to high of 10.1 months. More recent data respecting secondary school negotiations, as reported in the annual report of the Education Relations Commission for 1984-85, shows the average length of secondary negotiations for that year to have been 13.7 months. It is our view that recommendations for changes to the act should be of a nature that would shorten this negotiation process.

The original drafters of Bill 100 felt that teacher negotiations should be handled differently from other labour negotiations and not come under the auspices of the Ontario Labour Relations Act. Consequently, unlike labour negotiations under the OLRA, there is no "cut-off" date when negotiations come to an end so the union may strike and management may lock-out. At the present time, notice to bargain is given in January and since every collective agreement expire on August 31st there is an expectation that negotiations will occur throughout the spring in time for a collective agreement to be in place by school opening in September. In fact, as indicated by the data above, having

a collective agreement in place by September is the exception rather than the rule, and negotiations generally are not concluded until a time well into the subsequent school year.

In addition, fact finding which is unique in collective bargaining in the Negotiations Act introduces a process which adds upwards of two months to the period of negotiations with questionable results. Further comments and recommendations with respect to the process of fact finding are made in a separate section below.

In recommending changes to the current time lines for negotiations, a balance must be kept between expediting the negotiations process on the one hand, while not too quickly, and thereby increasing unnecessarily the number of sanctions on the other. There is at present little sense of urgency to conclude collective agreements by a particular deadline and, consequently, negotiations tend to drag on and on and on. In the recommendations made below with respect to the duration of negotiations we are attempting to shorten the time lines, but not create a situation where schools will be closed unnecessarily through either strikes or lock-outs.

At the present time notice to negotiate is given in January for collective agreements which expire on August 31st. In actual practice, the early part of negotiations beginning in the month of February usually involves the preparation of briefs by the parties, and in my cases it is not until April or May that initial position are tabled.

There is no doubt that under present circumstances that much valuable negotiating time is wasted between January and June. What we are proposing is that notice to bargain should be given in March, thereby putting some pressure on both sides to have their proposals ready in April so that serious bargaining can take place during the spring months. Most agreements will be concluded by the middle of June, thereby avoiding our next step, that of mediation which will be dealt with in the next section.

Consequently, Mr. Chairman, our first recommendation is to amend Section 10 of the Negotiations Act to make March the month in which notice to negotiate is given.

Incidentally, Mr. Chairman, you will find the summary of all our 11 recommendations on pages 14 and 15 and there is also a time line on page 16.

Mediation Assistance to the Parties: At the present time Section 12 of the Negotiations Act gives the parties the right to request the commission to assign a person to assist the parties to make or renew the agreement early in the negotiation process. In addition, the parties may agree to request the commission to appoint a fact finder or to

refer all matters to arbitration or final offer selection. It is our feeling that the fact finding process has not been a particularly helpful one in recent years. Our recommendations relating to fact finding are dealt with in Part III below. In contrast, involvement of a third party mediator to assist the parties has been very helpful in reaching agreement.

We believe that the process of mediation instituted after the parties have had a reasonable period of time to reach an agreement is a preferable route to follow to that of fact finding. Also, we believe that this mediation should be instituted by June 1st so that there is a good chance of reaching agreement before school ends.

In addition, there would then be the opportunity for negotiations to continue under mediation during the summer months. In this way the summer period which is usually a hiatus in negotiations could also be put to good use.

In keeping with our concern about the length of negotiations, the process of mediation should not be open-ended but should conclude either with a settlement prior to school commencing in September or with the mediator declaring that an impasse has been reached prior to September 1st. This would, in our view, force the parties to negotiate the issues within a reasonable time frame.

This increased use of mediators will require additional persons trained for this role. However, if both our recommendations with respect to mediation and fact finding are taken into account, any perceived shortages of qualified personnel would be ameliorated.

So our second and third recommendations, Mr. Chairman, are: If no agreement between the parties is reached by June 1st, then the Education Relations Commission shall forthwith appoint a mediator to assist the parties.

If the mediator believes an impasse has been reached, the mediator shall so inform the ERC any time after June 15th. In any case, the mediator must inform the ERC before August 31st that an impasse has been reached or that a settlement (subject to ratification) has been concluded.

Following the involvement of the mediator, if no agreement is reached by August 31st then we believe that the teachers should have the opportunity to vote on a last offer as soon as school re-opens in September. The intention in so doing would be, again, to focus the parties' attention on reaching agreement if at all possible prior to the re-opening of school. If this is not achieved, then steps should be taken that would put the branch affiliate in a position to strike or the board in a position to lock-out.

At the present time, negotiations often drag on

through the fall term and into the winter term with no agreement being reached. Since only the branch affiliates can request a last offer, there is little the board can do to bring a finality to the negotiations. This is currently the situation in which we find ourselves with respect to the elementary negotiations which are still continuing in Metropolitan Toronto. Our recommendations would mandate that in the absence of a settlement a last offer must be made to the teachers early in September and a vote must take place.

Consequently, we would recommend in 4 and 5 that if the mediator has declared an impasse, pursuant to recommending 3 above, the board must submit a last offer to the branch affiliates within seven days after the re-opening of school in September.

The members of the branch affiliates must vote on this offer within seven days of its receipt by the branch affiliates.

Mr. Chairman, I will ask Mr. Budd to continue our presentation relating to sanctions and what happens after we had the vote.

Mr. Budd.

Mr. Budd: Thank you.

Mr. Chairman, I will continue with the section on sanctions. Strikes or lock-outs in education are always disruptive, traumatic events for the parties and the communities involved. Therefore, any changes in the Negotiations Act should be made so that the chances of increasing strikes or lock-outs are minimized. For the ten year period, 1975-85, the ERC data shows a total of 37 strikes. (For reference, the ERC 1984-85 Annual Report. This total would be 42 if Metropolitan Toronto are counted separately.)

At the same time, if the teachers' right to strike is to remain then it should be balanced, in our view, by board's parallel right to lock-out. In the section above on time lines for negotiations, our recommendations are made to focus both parties on a last offer vote which would be held early in the school year. Following a rejection of a last offer by the teachers, then the branch affiliate should have the right to strike after seven days' notice has been given and the Board should have the parallel right to lock-out also after having given seven days' notice. The right by the branch affiliate to strike and the board to lock-out would not be limited in any way. Once a branch affiliate has decided on strike action it may use any type of strike it wishes, partial, rotating or full. Similarly, if a board should decide to lock-out it may choose to lock-out one

school or all schools.

Therefore, we recommend, No. 6: If the branch affiliate rejects the board's last offer, the branch affiliate may strike after giving seven days' notice to the board and the board may lock-out after giving seven days' notice to the branch affiliate.

With respect to altering terms and conditions of employment: In the Negotiations Act the right now exists in Section 10(3)(b) for the board to change any term or condition of employment 60 days after the fact finder's report has been made public. Since we will be advocating the elimination of fact finding, but feel strongly that the board's right to alter terms and conditions of employment should remain, we are propose to tie this right to the branch affiliates rejection of the board's last offer.

Accordingly, we believe that if the branch affiliate and the board have not reached a subsequent agreement after the rejection of a last offer, then the board should have the right after 30 days to alter any term or condition of employment. This right of the board to alter a term or condition of employment may be seldom used, but should be available as a means of bringing pressure to bear on the branch affiliate so that the negotiations will not drift aimlessly for a prolonged period of time without either an agreement being made or sanctions being imposed.

Therefore, we recommend, No. 7: If the branch affiliate rejects the the offer of the board last received, and if no subsequent agreement has been reached, and if no strike or lock-out has occurred, then when 30 days have elapsed after the rejection of the board's last offer the board may alter any term or condition of employment.

I would like now consider the work-to-rule strike. Another issue related to sanctions that in our view needs to be changed is the status of the work-to-rule strike. At the present time, such a sanction is a strike under the definition of Section 1(1) of the Negotiations Act but it is a strike with a difference. The difference is that under Section (5)(a) of the Negotiations Act a teacher continues to be paid salary during this type of strike. In our view, both sides should seriously contemplate the consequences of a strike or a lock-out before any such action is taken. This must be the case so that the incidence of strikes is minimized and the duration is as short as possible.

The work-to-rule strike has serious consequences for the board, for the parents and for the students involved. In such a situation the students are often deprived of their extra-curricular activities which are generally regarded as part of the fabric of education in Ontario; their school programs are disrupted particularly if teachers refuse to

mark tests or to provide after-school instruction; and the parents feel that they are not getting the type of overall school program for which they are paying. On the other hand, while the teachers' workload may be lightened, their salary cheque is not.

We believe that Section 68(5)(a) should be amended so that the work-to-rule strike is put on the same footing as a withdrawal of services strike. In making this recommendation, we recognize that this would in all likelihood end such strikes and focus the attention of the branch affiliates on the use of a withdrawal of services type of strike which has costs for both party.

Therefore, recommendation 8 is to amend 68(5) of the Negotiations Act to read: A teacher shall not be paid salary in respect of days on which, the teachers takes part in a strike; or the teacher is locked out; or the school in which the teacher is employed is closed, pursuant to subsection (4).

We have commented earlier on the question of fact finding and I would like to add some additional comments now. The process of fact finding was conceived as a way to put pressure on both parts and to narrow differences between the parties by submitting the competing positions to careful scrutiny. The intent of fact finding is to have a neutral third party investigate the situation and to file a written report which is intended to be assistance to the parties in coming to an agreement.

In recent practice, however, fact finding has become an almost automatic device that in our view prolongs rather than expedites negotiations. Evidence of recent trends in this regard are indicated in the Education Relations Commission 1984-85 Annual Report. As the Commission states:

"...the results for the 1984-85 are troubling. Out of 227 sets of negotiations 57 per cent or 130 required a fact finder appointment. This represents one of the highest appointment rates since the inception of the ERC."

Later in the same report a comparison is made of the length of negotiations in jurisdictions where a fact finder was appointed early in the negotiations process compared to other jurisdictions. The Annual Report states that:

"The results tend to indicate that the early appointment of a fact finder did not have a positive impact on either the length of the negotiation or the number of stages utilized by the parties."

The process of fact finding of itself brings negotiations to a halt for a considerable period while the

parties prepare the detailed submissions necessary for the fact finder. For the branch affiliates, fact finding has become both a hurdle that they must jump on the route of imposing sanctions and the vehicle to win some points in a debating forum that they may not win in the negotiations themselves.

The exercise of fact finding entrenches the parties in support of position which they have proposed to the fact finder. Upon release of the fact finder's report each party tends to seize upon those aspects of the report which support its and tends to ignore those that do not.

Fact finding may have been a useful process in the early stages of teacher-board collective bargaining, but it is our view that it is now of dubious value.

Consequently, we recommended, No. 9: That the process of fact finding be discontinued as part of teacher-board negotiations.

I would like, Mr. Chairman, to turn things to Mr. Curtis for the next section of our brief.

Mr. Curtis: Mr. Chairman, I am going to deal with the issue of the bargaining unit. We wish to consider two matters related to the composition of the bargaining unit in teacher-board negotiations. Our first concern is the position of the principal and vice-principal as members of the branch affiliate. It is the board's view that principals and vice-principals are in fact in-school administrators and as such, under the form of negotiations conducted under the Labour Relations Act, would be excluded from the bargaining unit.

There was certainly considerable debate at the time of the writing of the Negotiations Act as to whether or not in education the principal, as principal teacher, should be considered within the bargaining unit or whether the principal's role as manager of the school should take priority and have this position excluded from the bargaining unit. The compromise made in 1975, namely to have the principal and vice-principal remain in the unit but not be able to participate in the strike, does not resolve the conflict between the principals' and vice-principals' roles as managers and administrators and their position in the unit.

The compromise has been at best an uneasy truce. The principal of today is the manager and director of the school and as such should not be a union member. The principal is the person who would generally hire and fire, and thereby is a direct agent of the Board. It seems rather ludicrous that this manager's salary is negotiated by the very people that the manager is employed to direct. No one can adequately

serve two masters, and although the principals that try valiantly to do so, it is our belief they should no longer be asked to carry this double burden.

Consequently, we are recommending that the Negotiations Act be amended so that principals and vice-principals are not members of the branch affiliate.

Our second concern is the multiplicity of teacher bargaining units which are currently involved in the negotiations process. At the present time in Metropolitan Toronto, FWTAO, OPSTF and AEFO are involved in the elementary teacher negotiations and OSSTF and AEFO in the secondary negotiations. The multiplicity of branch affiliates who represent the teachers means that there is a potential for multiple bargaining units and parallel sets of negotiations for the collective agreements in either the elementary or secondary panels.

Section 4(3) of the act allows, but does not mandate, different branch affiliates representing teachers in the same panel to negotiate together with the board. There still exists the potential in, for example, the elementary negotiations for FWTAO, OPSTF and AEFO to demand separate bargaining of collective agreements with the board.

The formation of additional bargaining units for French language schools raises the prospect of further complicating this situation. It is the board's view that whatever the composition of the particular branch affiliates, there should be one negotiating team to represent the teachers employed by the Boards in each of the elementary and secondary school panels.

Therefore, we recommend in (10), to amend Section 64(1) of the act to read "a principal and a vice-principal shall not be members of the branch affiliate"; and (11): for the elementary panel (JK-Grade 8), and for the secondary panel (Grade 9-OAC), there should be one negotiating team in each panel to represent the teachers employed by the order.

I will now turn the matters over to the Chairman, Mae Waese.

Ms. Waese: Thank you.

In summary, we believe the following issues should be addressed in make revisions to the School Board and Teachers Collective Negotiations Act.

First, we believe that time lines should be altered with a view to shortening the process of bargaining. Recommendations 1-5 of this brief would, in our view, serve to meet this need and help to remove the criticism of the process that presently comes from both boards and teachers.

Secondly, we believe that in the name of equity, the teachers' right to strike should be balanced by the boards' right to lock-out. Furthermore, no one involved in any form of strike should be paid during the period of the strike. Recommendation 6, 7 and 8 achieve these aims in an equitable manner.

Third, our experience indicates to us that fact finding is no longer a process that serves the need of teacher-board negotiations and that it should be abolished. We propose placing a greater reliance on mediation as a means of achieving settlements.

Four, principals and vice-principals should not be members of the bargaining unit but should be regarded as management personnel.

We believe that there should be one negotiation team to represent the teachers in each of the elementary and secondary panels.

Mr. Chairman, we encourage your committee to adopt these recommendations for we believe if they were to be incorporated into a revised negotiations act everyone would benefit, not only teachers and boards of education, but the taxpayers of Ontario as well.

Thank you once again, Mr. Chairman, for this opportunity to present our point of view.

The Vice-Chairman: Thank you for your presentation. It is certainly straight to the point and very complete. We have some questions for you, however, and I will start with Mr. Callahan.

Mr. Callahan: I have just one specifically, maybe two. You have indicated that during the work-to-rule the teachers should not receive any salary either. As I understand work-to-rule it is that they do exactly what their contract says they do and nothing more, nothing less.

If that is the case, are you not asking us by legislation to rewrite the contract for the teacher -- first of all, to rewrite the contract, and secondarily I have some grave concerns about the quality of the extra-curricular participation, and so on. Would it not be lessened by this intrusion into that process?

Ms. Waese: Perhaps Mr. Budd would like to respond.

Mr. Budd: In the case of the work-to-rule strike, we believe that there is very difficult gray line or gray area to draw there. In the case of several work-to-rule situations it is a matter of not just extra-curricular activities that tend to be curtailed or tend to be affected

by such a work-to-rule strike, but in fact areas that relate to, as we have said, marking of tests, marking of exams, preparation of marks for final report cards, and things of that nature.

In addition, if we go to the extra-curricular concept -- we have used that word in this brief because I think it is the most familiar. If we consider the delivery of education in Ontario now as mandated say in the intermediate and senior decisions through OSIS, those activities are in fact referred to co-curricular activities, and I think further burying this line of what is specifically within the contract and what is in fact in the teachers' view something that they are delivering of a voluntary nature solely above and beyond the contract.

So we feel that if you consider the public view of education these matters that teachers view as being strictly extra-curricular are in fact the public's viewpoint, as we have said, of the fabric education. They are not just frills or extras that are added on and they then impact on the type of education that we offer and; therefore, their withdrawal in a strike of a work-to-rule variety is a rather serious matter. It is a serious matter that has, in our view, not a balanced consequence for the teachers. It has a consequence for the boards of education and it has a consequence for the parents, it has a consequence for the students in a loss of programs, something they see as being program. But it does not have as a balancing consequence a loss for the teachers as does a withdrawal of services strike.

So what we are proposing in this whole section relating to sanctions is that we look at the balance so that both parties have to consider the options they are taking before they enter into something as serious as a sanction.

Mr. Callahan: But I think your point is made in the brief as well that if you include this within the framework of the sanction for strike, and it is a strike, you are opening the door, perhaps, and not encouraging but certainly making available more direct action by withdrawal of service.

Let me just ask you this: If you are talking about making work-to-rule sanctions the same way as a strike, I would agree with you that even if the contract did not specifically say marking of papers and perhaps extra help was a term, seeing that that is a necessary and implied term of the contract, the after school things such as sports, and so on, seem to me to be not the case. Although I know most of the teachers I have talked who have been in work-to-rule situations have never felt as a professional that it was appropriate and in the best interest of the children to withdraw extra help or the marking of papers, they may have

participated by not carrying on the sports activity.

Would you be amenable that that be defined, the words work-to-rule which include those and exclude the others, and perhaps retain or eliminate the attractiveness of going to a full withdrawal of services because of that particular type of action?

Mr. Budd: That would certainly move in a direction which would be somewhat helpful in delineating what is exactly -- therefore, a work-to-rule type of strike, and maybe it is possible to draw those lines. I think if you get to look at what people are hired to do in schools you get into a difficulty where that line is going to be drawn successfully.

If you consider, for example, someone who is hired within a physical education department, is it part of his contractual responsibility to take a reasonable number of coaching assignments within the school year or is it not? I don't think there is that hard and fast line. That is why I say there is a gray area, there is a line there that tends to be blurred.

The teachers would blur it on one side to say that a great list of things are being done strictly on a voluntary basis, and I suppose boards would respond and say - well, in terms of the kind of program we are delivering we don't regard those things as add-ons, things that are tacked on or frills; we regard them as part of the package that you buy into when you enter into a contract with our Board of Education.

Mr. Callahan: Two others, if I could.

Mr. Merritt: Could I just add something to that. I think there is another aspect to the work-to-rule, and that is whose rules are they? That, I think, causes most of problems. Are they the teachers who decide what the rules are or do the boards decide what the rules are, and that in education in this province has never been decided and that is where the problem really arises is right there. What are the rules?

We saw that in this Hamilton strike a year ago where the teachers changed the rules, if you recall, went to arbitration and the teachers lost the arbitration because the arbitrator says you have got no right to do these certain things, and that is how far they pushed that particular idea about the rules.

Quite frankly, that is where the problem lies until something is done about it, and when there are no strikes there is no problem and nobody wants to deal with it because it is a real hot potato.

Mr. Callahan: Mr. Chairman, in the interest of time and also other people wanting to ask questions. If some of my colleagues are going to ask about the question of jeopardy, and also I would like a comment from them on the suggestion that was made by the previous board about the prolongation of the school year and not using this artificial cut-off of summer months might not be an inclusion that would encourage everybody to get on with the negotiations and look after the prime interest of concern, mainly the children.

The Vice-Chairman: Well, I will let the presenters comment if they want to keep it brief and short and not get into too many examples.

Mr. Callahan: Maybe they could say yes or no.

Ms. Waese: I think we would certainly be in favour of considering summer months being re-examined as to whether it is not appropriate to continue education during those months. I think that is very open-ended.

The Vice-Chairman: Mrs. Bryden?

Ms. Bryden: Thank you, Mr. Chairman.

I am interested that you want to keep principals and vice-principals out of the bargaining unit. While it is true that they do have some managerial functions, I would hate to think of the school as a sort of factory where they are the boss and the teachers are the assembly line, and I think in most schools it does not work that way. The principals and vice-principals sort of are part of a team and there is quite a bit of collegiality in making decisions about the operation of the school, and I would hope that that would be encouraged. But if you exclude them from the bargaining unit completely it does draw a sharp line between their functions as part of the teaching team and their functions as a manager.

Would it not be possible to simply have some rules that, as we now have, that they must remain with the school and that they have limited collective bargaining powers, in that sense, but that they still be part of the bargaining unit?

Ms. Waese: Mr. Curtis?

Mr. Curtis: We see that now through Bill 100 and it does not seem to be working. We feel to some degree we are on the short end of the stick because there have been occasions when the chief negotiator for the teacher has in fact been a principal from the particular board and negotiating with the trustees.

Ms. Bryden: Is that not fairly rare?

Mr. Curtis: It was an occurrence that occurred back in '73/74 in a very difficult period in the Metro area. Generally it is a representative of the teachers. But the teachers are represented on the negotiating committee. I should say the principals are represented on the negotiating committee, the central negotiating committee. So that the economy is still there.

Ms. Waese: If I can add one more comment. It has been our experience where principals have joined the strikers in picketing the boards, at the same time they are supposed to be in the school building. The other part that is very much a part of their responsibilities is performance evaluations of staff. As a definite management employer they make recommendations whether to retain their positions or not, and it becomes very complicated. They end up, in fact, negotiating for their own salaries.

Ms. Bryden: So do legislators. This is a problem whether they can separate their two roles. One other question. On your request for the right to change conditions if the teachers do not accept the last offer which presumably could be, under your schedule, seven days after of the 1st of September. Wouldn't that really disrupt any further negotiations, introduce a whole lot of new items on the table that would then have to be bargained about because the teachers may not agree with all your changes and conditions? And the whole thing would then really be prolonged rather than shortened because the goodwill and the good faith bargaining would have been possibly destroyed by changes in conditions that had not been part of the previous negotiations?

Ms. Waese: Mr. Budd?

Mr. Budd: Mr. Chairman and Ms. Bryden, what we are proposing here is the retention of a right that now exists. The right that now exists is tied, however, to the completion of the fact finding process, and we are proposing that that be abolished.

Other than shortening the time line which is in keeping with our overall philosophy of looking at shortening the time line of negotiations, we are not introducing a new right for the board here; we are proposing that that time line be 30 days after the rejection of a last offer as opposed to 60 days after the fact finder's report is made public now.

Your concern is probably well-founded in the fact that doing so by the boards could in fact introduce new items, it could introduce complications to negotiations that exists

now in the right that exists, and it is something that the boards have to take into serious consideration before they would make such alteration of terms or conditions.

In our submission here what we are looking at in the section of sanction is that whatever sanction a party takes there have to be consequences for it and possibly for the other party as well that have to be looked at first. These are mature bargaining parties in your view now, more mature than they were at the time when the Bill 100 was first promulgated and came into force back in 1975.

So that we feel there is this ten years experience of bargaining now in teacher-board relations, and this is not a right that would be used frivolously by the boards. It is not used frivolously or very often now where it exists 60 days after the fact finder's report.

Ms. Bryden: Only experience would show whether it used frivolously.

Mr. Budd: I suppose you are right there.

Ms. Bryden: Thank you, Mr. Chairman.

Mr. Chairman: Mr. Lupusella?

Mr. Lupusella: Thank you, Mr. Chairman.

If I may, I would like to commend all the boards that appeared before this committee with different presentations, and pinpoint where the problem really lies in relation to Bill 100. Also, we had in the past, Mr. Chairman -- this is just a preamble which enlightens your mind -- that the NDP of course believes in the regional autonomy of the Board of Education across the province of Ontario and they want this power to be given to them, and when we are faced with Bill 100 they are able to save the principle of the right to strike. But when it comes to the strike the board doesn't have any power to at all to do something about education of the kids and the safeguard of the kids in the province of Ontario.

In that respect, I have to commend that the boards that are appearing constantly before us to pinpoint where the deficiency of the bureau really lies.

This morning I had an opportunity to receive from our legislative library research and the information services tables of strikes, lock-out and schools closing in the Province of Ontario since 1975 up to 1986. If I will take a close look to these particular strikes and the lock-outs, I have to determine that I will agree with all the boards that are appearing before us that there is a problem, a very serious problem, and the one common denominator which

appears from the list of useful data is that the teachers are implementing the principal with the right to strike either at the beginning of the school year or the end of the school year.

For those that are too naive to believe that they were concerned about education, I think that Bill 100 should be redrafted from first page until the last page. I do not want to mention, Mr. Chairman -- just to give you an example, 1975 and '76, Central Algoma, withdrawal of services, duration of sanctions from February 16, '76 to April 12, '76 - 35 days; Kent County, '75 to '76, December the 8, '76 to March 28, 1976, 4 days total withdrawal of services, 8 days lock-out, 53 days work-to-rule, 16 days rotating school strike.

The Vice-Chairman: We all have that information, Mr. Lupusella.

Mr. Lupusella: I understand. Just to give you an example which enforces really the principle of boards that are extremely frustrated to deal with this Bill 100 when education of kids are at risk. Of course from the teachers' point of view, for the last 12 years when a strike is called is to attack the governor and cut backs and the quality of education and all of this stuff which is very common to everybody. At any rate --

The Vice-Chairman: Do you have a question, Mr. Lupsella, really because...

Mr. Lupusella: Yes. I am getting to the point now.

The Vice-Chairman: We do not have any more time.

Mr. Lupusella: To the contents of the brief. I don't think that there is any disagreement to my mind about deleting the fact finding stage of the clause which is incorporated on Bill 100. Someone from the panel can respond, would you agree with me that an inclusion of a new clause in the act which states that negotiations must be conducted on a reasonable period of time with the power given to the Minister of Education to draft the regulations in each clause of the act is something which is really needed on Bill 100?

Ms. Waese: I would agree with that statement.

The Vice-Chairman: Mr. Davis?

I am sorry, we are out of time.

Mr. Lupusella: It was just a preamble.

The Vice-Chairman: Your preamble was very long and I

let you go on, but...

Mr. Davis?

Mr. Davis: Thank you, Mr. Chairman.

Two quick questions. With respect to the fact finder, the Matthews Report suggests that a fact finder still has a role and that is to come in just prior to the last vote on the strike towards the end of August, so that his findings are made public. How would you make public through the mediation process what is happening? What the offers are, which I understand is role of a fact finder?

Ms. Waese: Ron?

Mr. Budd: The role of the fact finder is to present his report which is made public. In our view, our experience with this in the last several years has been that the publicity attendum to a fact finder's report, particularly maybe where we are coloured by our situation here in Metro Toronto, is virtually nil, that it has no impact on the public.

Our last two fact finder's reports, I do not think if you went to the shopping plaza and buttonholed people as they went by and said what do you think of the fact finder's report in this upcoming secondary school or potential secondary school strike, that you would find anyone who would be be able to comment on that.

We did discuss in our lead-up to putting this brief together the fact of the Matthews Commission recommendation and OPS recommendation that the fact finding be made operational if both parties agree to that process. I suppose there is some merit in each of those. We felt, I guess colored by our experience, that the publicity that could legitimately be made regarding the parties position could adequately be covered by each of those parties, and the value of the fact finding where it takes a two-month chunk out of your negotiating time by the time you do the lead-up for preparation and presentations and then wait for the report and have it made public was not worth that process.

Mr. Davis: Do you have a coloured vision being in Metro?

Mr. Budd: I suppose --

Mr. Davis: --out across the rest of the province.

Mr. Merritt: You were suggesting that that would happen during mediation or just before a school starts in September. I think if you have had a mediator working with

you, which we suggest for at least a couple of months, he would have brought both positions very clearly out, and if he cannot get those parties to come together and make an agreement then I do not think having a fact finder, who is also a neutral third party -- which is what your mediator is -- is going assist you in any way to do that. All it is going to do now is have both sides state again and again those two positions which got them into the problem in the first place.

If the mediator, with his sort of quiet, behind-the-scenes way of acting, cannot bring them together then I do not think the fact finder, when you have a formal presentation -- What you do in fact finding, just like a court of law almost, is more confrontational and mediation is not going to help any.

Mr. Davis: I know that you probably have not seen the OTF report yet.

Mr. Budd: No.

Mr. Davis: I would like you to look at it and, please, comment if you could or in writing or let the Chairman know or something about their suggestion, which is recommendation no. 5. As I understand it, if there is a strike, the Ministry now recoups the government portion of savings and recognized ordinary expenditures.

If I am correct, they recoup a percentage of the total annual grants for special ed and the trainable retarded for each day of strike, but they have added a third one and the rationale behind it is if they do not get salaries and if the board is not getting money maybe it will tighten down the negotiating process, and they suggest to recover 1/200th of the weighted level of the recognized ordinary expenditure per pupil for each day of the strike or lock-out. Would you like to look at that and comment on it, please, at some point?

Mr. Merritt: Sure.

Mr. Davis: Because I would like to know what the --

Mr. Merritt: We could make a comment right off the top of our head but I think it would be better if we went back with our financial people and studied it.

Ms. Waese: We will be very pleased to do that and we will respond to the Chairman of the committee.

The Vice-Chairman: That was the last one. I am sorry, Mr. Davis, I do not want to be rude, but it is a matter of time. I would like to thank the Board -- I am sorry, the Metro Toronto Board for coming here today and

giving us their brief.

Ms. Waese: Thank you very much.

The Vice-Chairman: Thank you.

Our next presenters are from the Etobicoke Board of Education. We have Don McVicar, Associate Director; and two Trustees, Suzan Hall and John Tolton.

Lady and gentlemen, welcome to the committee. For Hansard, Mr. Tolton, if you would identify yourself and the two people who are here.

Mr. Tolton: Pardon me?

The Vice-Chairman: I said, for the record would you identify yourself and the people that are with you.

Mr. Tolton: Of course.

My name is John Tolton, I am an Etobicoke Trustee in the Metropolitan Toronto School Board Trustees and their past Chairman; to my right is the Chairman of the Etobicoke Board, Suzan Hall; and to my left is Associate Director of the Etobicoke Board of Education, Don McVicar.

Gentlemen, given the time advisories, people seem to be a little anxious to do something else than perhaps be here, and I am going to try and do a synopsis of this brief that we have before you.

I have overheard some of the presentations this morning and there are quite a number of similarities, and I do not wish to be repetitive. What I will do is highlight those things that we feel are somewhat unique to our position.

As you can see on the opening page we have the rationale for discussion and the submission. I do not think that is particularly unique. I think we are all here for the same reason, because we have some concerns on Bill 100, given that we have had approximately 12 years' experience with it. What I would like also to point out is that on the books of the Etobicoke Board of Education there is a motion in principle to support the position taken by the Metropolitan Toronto School Board which you have just heard. We did it in that effect because, as you will see when I go along here that there are certain nuances, there are certain highlights that perhaps have a slightly different thrust.

We have before you 12 recommendations, and they certainly, I think, are worthy of our consideration. I which wish to touch on them briefly, each of the seven areas that they are involved in and would be happy to answer any

questions at the conclusion of the presentation.

I will go in detail, though, to start off. I think it is important that we emphasize our position on time lines, and I think there has been discussion in this forum on the issue of jeopardy. One of the reasons for your position on time lines is that we feel that it will partially at least help solve the problem of jeopardy of the student, in that I concur that it is rather like trying to pin jelly to a wall to say who is in jeopardy when. But we do really strongly believe that there is less jeopardy in September than there is in May and June.

So with that preamble, let me just run through, if I may, our position on time lines. As others have said, we believe the whole process takes too long. And the time frame established under Bill 100 calls for notice to bargain in January; however, since each collective agreement expires on August 31 there is the expectation that intensive negotiations will occur through the spring months, with the negotiation agreement in place, possibly with third party assistance, by September. As it has been pointed out I think a number of times to this committee, this rarely occurs and most often there is little serious bargaining before May and a long interruption of the process during the summer holidays for a variety of reasons, which I am sure many of you have touched on and are aware of.

The bottom line is, rarely is a collective agreement in place before the old agreement expires, and because there are no firm deadlines in the process teacher negotiations have become a yearly, 10 to 12 or longer, month exercise. Also because of the lack of deadlines a teacher strike can occur any time during the school year. If the strike occurs during the final months of the academic year, a successful completion of courses of study by the students is clearly in jeopardy.

The Etobicoke Board understands that legal sanctions are a part of present day labour relations, but belabours that students should not be held hostage because of strike action. Classroom instruction at the end of the school year is absolutely critical to not only the academic success of students but to the decision to return to their studies in the fall, and I gather we have somewhere out there a government body or a commission studying dropouts and things of that nature which may bring you people some interesting statistics when one correlates that with jurisdiction where there have been strikes and other forms of sanctions later in the year.

Certainly a strike or lock-out places students in jeopardy no matter what the time in the school year. However, after a sanction in the early days of the school year there is time with program adjustments to help students

to successfully complete their studies. A strike in May or June does not allow time for these program adjustments. A strike in May or June is especially harmful to those students moving on to post-secondary school education.

Recommendations under this section are as follows: That notice to bargain be given at any time after the parties agree to a new collective agreement; and by January the 15th, in the year that a collective agreement expires, both parties must present their initial briefs; (3) if a settlement has not been reached the teachers must vote on the board's final offer on or before June 15th; and finally, if no settlement is reached or the teachers do not accept the board's final offer, the schools will not open and a full withdrawal of services will commence as of the first day of school in September.

The next section on fact finding. I would say in the main that we concur with the position that you have just heard taken by the Metro School Board in that it is probably quite a useful exercise. Nevertheless, I think we really did not feel quite as optimistic as for the reason that the final recommendation would come down to eliminate it. So our recommendation is that it be made optional and that both parties to a collective agreement must agree to enter the fact finding.

One of the great criticisms that I have had over the years on fact finding is addressed by recommendation 6, and that is that fact finders should report only on the facts and not make recommendations on the terms of a settlement. Finally, that the ERC should develop specific guidelines for fact findings so as to simplify the fact finding process and thus assist the fact finder in determining the significant facts, and I think you have heard quite enough.

On that issue, I just, with an added note, that fact finding in my experience has become a destructive force when the fact finder comes forward with recommendations which is basically not as mandate, and very often the fact finder is not equipped to make sensible recommendations but the result, of course, is that one party or the other jumps on that as something to their favour and it solidifies the position and makes it much more difficult for a mediator at a later stage in the process.

Our position on the bargaining unit, I think our position in main concurs with that of the Metro Board. We certainly strongly believe that principals and vice-principals not be members of the bargaining unit; and a slightly different approach to the second item in terms of the numbers of people or numbers of groups in bargaining units. We address it by saying Bill 100 should forbid the formation of bargaining units on the basis of language or sex, and that may be in conformity with even the Human

Rights Commission or the Charter of Rights and Freedoms, one hardly knows these days.

The Education Relations Commission in the matter of jeopardy: As I mentioned in my opening remarks this is a very difficult gray area. We do think that someone should address this. I recall back in January of 1976 when he had the secondary strike in Metro that there was a hearing held by a group appointed by the Minister of Education to hear submissions as to are these students in jeopardy, and after a great number of presentations and as many viewpoint as one could imagine, I think 10 days later people decided that they were in jeopardy. And I hark back to our position in terms of time lines, that if you had a clash point in June that would result in a super clash point at the first of September, I think that would help address the jeopardy problem.

Just a note here on pink listing. I do not know whether you people are aware of what a pink listing is. A pink listing is basically an order from the headquarters of the of the teachers' union, be it elementary or secondary, to their membership that they shall not a take a job with a specific board of education. In effect, this has historically gone out on a pink piece of paper, and the names of those boards that the unions are upset with are listed there.

The sanction, I suppose, to the teacher, is that they make a statement to the effect that - we will not help you or do other good things for you if you should not follow our directive and take a job with this Board. This to me is another form of sanction, and I think it is somewhat archaic and, quite frankly, it should be removed totally from any of the legislation that permits it.

Moving on to work-to-rule. We concur with the position taken by the Metro Board in their brief, and the recommendation that we make there touches on a specific aspect of it, but in general we are in concurrence and I will not belabour that point; save and except, if I may be permitted to make an observation in terms of concerns that these co-curricular activities are in the main voluntary. May I suggest that those teachers who are perhaps the fabric of a school in terms of co-curricular activities -- I am thinking of here of music programs and athletic programs.

My experience has been that in the main the people that are spending large blocks of time doing that are given consideration in their timetable and teaching commitments during the 9:00 to 4:00 school day. And I submit strongly that these people, in effect, are being paid for their activities from 4:00 to 6:00 if that be it or 8:00 to 9:00 in the morning because they very often have time in lieu of, and in my view it is part of the fabric of the school and in

many cases maybe not equally as important, but very close to equally important as the academic programs that are being delivered in terms of the growth of students involved.

Finally, if I might, this I believe is a unique position, and perhaps something that you have not had put before you before and this is the issue of savings arising from strikes and lock-outs, and it is perhaps unique to Metro in that we do have the Federation and it is probably something I overlooked when we were dealing with Bill 127. One of the few things we overlooked, Brother Davis. At any rate, let me just put this on the table for you.

The issue is, namely, the reduction of the mill rate in a local municipality because of the area board has experienced a strike or a lock-out. This strike is partially related to the review of Bill 100 in that strikes or sanctions involving teachers have been given legal status through this bill. However, the Etobicoke Board is aware that other employees not covered by Bill 100 have the legal right to strike. In Metropolitan Toronto, all strikes would result in the Metropolitan Toronto School Board holding funds in reserve, and in the year after the strike reducing the sum required to be raised by all the municipalities in Metro for public or secondary school purposes.

The Etobicoke Board of Education believes that only those ratepayers who bear the inconvenience of a strike should receive the savings arising from the strike. This is not currently legally possible at this time in the Municipality of Metropolitan Toronto.

Our recommendation, therefore, is that Section 211 of the Education Act be revised in order that the ratepayers in those local municipalities that had experienced a strike or lock-out of employees receive the savings caused by such sanction through the reduction of the following year's mill rate.

That, Mr. Chairman, concludes the presentation, and thank you very, very much for your attention and we will be delighted to answer any questions you might have.

The Vice-Chairman: Thank you very much, Mr. Tolton, and we will proceed to questions. I would ask the members to cooperate in order to get pink listed or whatever, pink slipped.

Mr. Johnson?

Mr. Johnson: I would like to refer to recommendation 10, the ERC and jeopardy.

Mr. Tolton: Yes.

Mr. Johnson: You, I think, said that you supported the Metro brief?

Mr. Tolton: In principle.

Mr. Johnson: In principle. They had 11 recommendations. I wanted to ask this question but the Chairman would not allow it so I will have to ask you. It seems to me that we go through the motions from March into September and then we find that we are in a strike position; how do you get out of a strike position?

Mr. Tolton: There are two ways of doing that. One is a personal bias. I do not think the province should have ever given the teachers the right to strike in the first place, but that is not what we are dealing with. To further address that, now that we have the right to strike, what I have done with my colleagues is attempt to pick the time out or the potential time of that strike bearing in mind the education of the students, and the most propitious time if we have to have one is the 1st of September.

A couple of other psychological benefits there, too. Having grown up in a family of school teachers years back, their pocketbooks are about the slimmest the 1st of September that you can imagine, and that might be an added incentive for them to do a little bit of serious bargaining at that time. If schools do not open, we feel it could be picked up by adjustments later on the year as compared to doing it later on.

Mr. Johnson: I did have an experience in Wellington County that they did go on strike in September, but they did not get out of the strike until well into November - 52 days.

Now, the problem that we had is the ERC would not address the issue of jeopardy and we could not get a hearing through that process. That is the point I was asking about. You mentioned that the bill should be amended to provide specific criteria to determine jeopardy. How would you do that?

Mr. Tolton: I think I have mentioned a couple of times that it is a very difficult task.

Mr. Johnson: You said something about jelly on a wall.

Mr. Tolton: It is. I think we have pointed out that for some students the first day of a strike has students in jeopardy and others it may be 30 days. I do not know what the answer is, and I think this is something that the ERC with the direction of the government has to bite the bullet on. If I had an answer to it, and our group had, I think we

would have before us.

(Interjection)

Mr. Tolton: As I have said, the easiest thing to do would be to remove the right to strike, and I really find it quite obnoxious that a monopoly group of employees do have a right to strike and the hostages in that environment are the students in the province, but that is not for me to do anything about other than mention it to you gentlemen.

Mr. Johnson: Is this recommendation 12?

Mr. Tolton: That is a personal add-on of my own brief.

The Vice-Chairman: Mr. Callahan?

Mr. Callahan: Just a supplementary to Mr. Johnson's comment. You talk about ending the negotiations and if nothing is reached the school year does not start. What about the other side of the coin, the school year does not end? In other words, all you are doing is you are moving. I always found it rather unusual that school years seem to be affixed, and I know the historic background behind it, but today it does not make any sense because of the vast amount of dollars tied up in it and so on.

What would you think of that, that if it is delayed, say, until October or November that you move the school year right around so you come right back in September again?

Mr. Tolton: I personally have little difficulty with that, but I do believe that there are certain amendments that would be required in the legislation to permit that. However, to concur with your observation, there are large numbers of students today that take summer courses. So, in effect, they have by their own actions been extending the school year. It is something I think is really worthy of looking at.

Mr. Callahan: I am sure my kids would hate me for making that recommendation.

Mr. Tolton: As most kids would.

Mr. Callahan: Thank you.

The Vice-Chairman: Mr. Allen?

Mr. Allen: Mr. Chairman.

I want to express my appreciation to the Etobicoke Board for coming before us and giving us the benefit of their advice. I take to heart their observation that in

principle they support the Metro Board proposal.

I notice, however, the time line is rather notably different and you have moved to get a third kind of option for us there. We have had quite a few time lines given to us and I am not sure that they begin to cancel each other out or whether they are all just reinforcing the same point but not giving us a very clear sense of why any one of them is better than any other.

So I want to ask you, why did you not concur with the Metro Board's time line, which does not begin as early as yours and goes on longer?

Mr. Tolton: One of the difficulties that I have -- it again ties in with the jeopardy issue. The Metro Board time lines, it is probably mid October before the same things would happen; as under our suggestion, would happen the 1st of September. And secondly, from experience I can't imagine anything useful or productive happening over the summer; and whereas the vote is called for under that proposal in September, our proposal calls for the vote in mid June.

The reason I say that is that my experience has been that the teachers say - we are going on holidays in July, in the main, and except in the occasions where we get late into some fact finding, we have to do some preparation for that and that occasionally happens late July. I think everyone in the room, I doubt many people are aware that teachers tend to have conventions and annual meetings and things of that nature in August.

So you are really looking at down time in that the people who are generally involved in the negotiations on the teacher's side are also officers of the union and involved in these meetings. For all practical purposes, July and August is gone. That is why I call for the vote -- Etobicoke does in mid June, the 15th of June in the final offer.

Mr. Allen: It would not be part of your experience to think that allowing for further negotiations in September is particularly helpful?

Mr. Tolton: Quite frankly, and also our time line calls for the beginning of negotiations any time after the contract is put to bed. For instance, let's say that the contract hopefully, let's say, is October when there is a deal done, we say at the latest, the subsequent January you put the offers out there. There is nothing in our suggestion that prevents them from not starting in November.

I suppose if people were anxious to get a deal and there was good feeling, they would get going earlier. But, in any event, January the 15th they would have to have

positions in either ends. Now I know the Metro position says, I think, March. Really what we are trying to do is back it up and again focusing, to a large extent, on the jeopardy issue which we think would be best addressed by bringing the time line of strike back to the first day of September.

Mr. Allen: You deliberately avoided the question of mandatory mediation, or do you just generally feel that that is a useful proposition but it should only be introduced at the advice and option of either or both parties?

Mr. Tolton: We have no quarrel whatsoever with the present practice.

Mr. Allen: Okay.

Mr. Tolton: I find mediation has been, quite frankly, a saviour to many of the confrontations we have had and I cannot remember in recent years arriving at a contract without it.

Mr. Allen: But you are not suggesting a fixed point at which it should come into play if there is no agreement on the issues by certain dates, let us say, 1st of May, mid April?

Mr. Tolton: I do not feel strongly about a date. I think the way things evolve that quickly you get into mediation, in any event, has become the norm rather than the exception.

Mr. Allen: The last question, I just want a quick answer. If you lock-out, as proposed in those boards in most submissions, would you in fact use it or is it really just a symbolic equalization of powers?

Mr. Tolton: That is a hypothetical question, Mr. Chairman. I think it would depend on the nature of the board involved at a given time. I know where I come from, but a board is a board and it is a collective wisdom of all the members and it would vary from circumstance to circumstance.

Mr. Allen: Thank you.

The Vice-Chairman: Mr. Davis?

Mr. Davis: Thank you, Mr. Chairman.

Just to come back on the mediation being used. Metro's scene is different, you do move to mediation much faster than you do when you are in the areas outside of Metro.

My question is, I want to talk about the savings arising from strikes. Presently if a board, any board -- I do not think I have to deal with Metro because I know the unique situation -- any Board is in a strike and the monies they save because of the strike, does that go back to the taxpayers' dollars or is it used in the ongoing funding of that year? I know what Metro does.

Mr. Tolton: I believe the act calls for the grants if a board does get grants, that really is not a concern of Metro anymore. But the grant money would go to the province, that portion of it that is applicable to the teachers' salary, part of the formula; and the monies on the local levy that were accrued to the board would go as a credit the next year in the tax breaks. That is how the monies would be divided up under the current legislation.

Mr. Davis: I would just like your comment on the remarks from the OTF. The OTF suggests that the teacher is penalized because they do not get salary when they are out. But the board is not penalized with respect to limits of funding because the funding still flows through to them. They suggest a formula for the recovery of some percentage on the recognized ordinary expenditure per pupil.

How would you feel that about that if that was imposed?

Mr. Tolton: Are we talking here, Mr. Chairman, about the monies that are accrued from the province or those accrued through the property tax?

Mr. Davis: Through the property tax, because the ones that come from the province, as I understand -- I think you already clarified it -- already go back. So it would come from the property tax.

Mr. Tolton: If I can just make an observation, the community is paying through the withdrawal of services and if they are arrogant enough and foolish enough to suggest that the province should those taxpayers dollars from them or from the Board -- they really said that?

Do I understand that they wanted to take the property tax money and put it into a provincial coffer or something.

Mr. Davis: No. They didn't say that.

Mr. Tolton: So really they wanted it for their own strike fund. That could be it, then. You misunderstood them.

Mr. Davis: No, no. It is a proposition which I have heard on different occasions.

Mr. Tolton: My only comment is it is totally bizarre, and I think it would be a form of confiscation on the part of the property taxpayers in the jurisdiction involved and I think that they would have lawsuits. I think whatever political body tried to change legislation to put it into place would be facing huge delegations and if ever put in place would probably be challenged in court. To me it is stealing.

Mr. Davis: Okay. They were not getting it, John, by the way.

Mr. Tolton: You tend to pull my leg from time to time, is this another one of those occasions?

Mr. Davis: No. No, it is not, John.

Mr. Tolton: Okay.

Mr. Callahan: He does the same thing with us.

Mr. Allen: Mr. Chairman, just a quick note because I think it needs to be read out:

"That the Ministry of Education subsequent to a strike or lock-out adjust transfer to the school board, (1) to recoup the government portion of savings in recognized ordinary expenditures; (2) to recoup 1/200th of total annual grants for special education in the training for retarded for each day of strike or lock-out; (3) to recover 1/200th of the weighted level of the recognized ordinary expenditures per pupil for each day of strike or lock-out."

There is no suggestion of attaching from a local property tax in order to enrich provincial coppers. That is the wording in the brief.

The Vice-Chairman: Mrs. Bryden?

Ms. Bryden: I was clear on your proposal about cutting back the mill rate where there has been savings and I think that is an interesting proposal. As you say, you are the first people to bring this forward.

Would there not also be some pressure from parents that some of those savings might be spent on reducing classroom size or assisting the pupils in some sort of catch-up and things of that nature; in other words, should you just automatically ask the Metro School Board to give back to the affected area that had had a strike the amount as a reduction on their mill rate, or should there be an invitation to other people who are affected by the same strike to make suggestions as to what might be done with that money when it was transferred back, or if it was

transferred back in a lump sum rather than as a reduction in mill rate?

Mr. Tolton: Mr. Chairman, some of the suggestions that have been made I have heard before, but many of them are precluded by the fact that they deal with sections of the collective agreement. For instance, class size, it talks about the number of teachers, and that might very well be why the strike in because they are negotiating for more teachers. I don't know if that is terribly practical.

I think it is up to the local jurisdiction to make such a decision but they cannot, if I can use the word, fiddle with the staff allocation formula which is one of the negotiated items. Given that, I think some 70 per cent of the ratepayers and almost jurisdictions today, the only connection with the schools is it what they see in their tax bill. They don't have students in and, whatever.

My perception is, and this is why you see this before you, that people say we had a strike, we lost the service, we want to see the credits on our tax bill. I think that could be left within the confines of contracts and other things could be left to the local jurisdictions should such an amendment appear.

Ms. Bryden: It is an interesting proposal.

Thank you.

The Vice-Chairman: Thank you, Mrs. Bryden.

Thank you, Mr. Tolton.

Would Miss Hall or Mr. McVicar have anything to add?

Mr. McVicar: Not at this time, Mr. Chairman.

Ms. Hall: I just have one about a previous -- extending the school year, I was wondering how it would affect grade 13 or OAC students who want --

Mr. Callahan: I was not suggesting that they are recognizing that that would create a problem.

Ms. Hall: I see. So you were recognizing that --

Mr. Callahan: Yes.

Ms. Hall: --and we are not suggesting that they should be put in jeopardy by extending their year so that they would not be eligible to enter university?

Mr. Callahan: No. Plus the fact that most of those people have to get out and start earning some money during

the summer to help pay for their universities.

Ms. Hall: Thank you. That was all.

Thank you.

The Vice-Chairman: Thank you.

Mr. Tolton and the Etobicoke Board, I want to thank you for appearing before us. We appreciate your comments and your brief.

Members, if you just to want to hold on a minute.

Just an update on the Ottawa situation in regards to translation services. What I have decided is to go ahead and bring our open staff and make arrangements in Ottawa for a booth and translation services. If it okay with you, we are going to go ahead with that. It is most simple, less expensive and delivers the service.

Thank you.

We will be adjourned until 2:00 o'clock this afternoon.

The Committee adjourned at 12:30 p.m.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

SCHOOL BOARDS AND TEACHERS COLLECTIVE NEGOTIATIONS ACT

FRIDAY, MARCH 27, 1987

Afternoon Sitting



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Lane, J. G. (Algoma-Manitoulin PC)

Lupisella, A. (Dovercourt L)

McKessock, R. (Grey L)

Offer, S. (Mississauga North L)

Pollock, J. (Hastings-Peterborough PC)

Sheppard, H. N. (Northumberland PC)

Substitutions:

Callahan, R. V. (Brampton L) for Mr. Fontaine

Davis, W. C. (Scarborough Centre PC) for Mr. Sheppard

Johnson, J. M. (Wellington-Dufferin-Peel PC) for Mr. McCague

Reycraft, D. R. (Middlesex L) for Mr. McKessock

Clerk: Deller, D.

Witnesses:

From the Ontario Federation of Labour:

O'Flynn, S., Secretary-Treasurer

O'Grady, J., Legislative Director

From the Wellington County Board of Education:

Lawless, W., Chairman

Forsythe, W., Director of Education

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GENERAL GOVERNMENT

Friday, March 27, 1987

The Committee met at 2:05 p.m. in room 228

CONSIDERATION OF REVIEW OF THE SCHOOL BOARDS
AND TEACHERS COLLECTIVE NEGOTIATIONS ACT
(continued)

The Vice-Chairman: I would like to call the committee to order now that we have a quorum. I would like to welcome everybody to the General Government Committee and the review of Bill 100. Our first presenters are from the Ontario Federation of Labour. We have Mr. Sean O'Flynn, who is Secretary Treasurer of the OFL, and John O'Grady, Legislative Director. Welcome to the Committee.

Mr. O'Flynn: Thank you very much.

The Vice-Chairman: It is nice to have you here.

Mr. O'Flynn: We welcome the opportunity to make this presentation to you.

We are here for two reasons. As a trade union organization we are concerned about all collective bargaining legislation in this province and we know that debates about collective bargaining in one sector can very quickly spill over into other sectors.

The vast majority of our members are parents and we are concerned about the impact that changes would have on the quality of education. There is no contradiction in these roles -- that of parents and that of trade unionists. As a trade union federation, we represent employees in virtually every conceivable occupation and we know that the way in which decisions about employment conditions are made affects profoundly an employee's attitude.

There must be fairness and fairness is a matter of both substance as well as process. As parents, we know that the teacher in the classroom is the key to our sons' and daughters' futures. Anything which contributes to a sense of grievance amongst teachers undermines commitments and has its effect on our sons and daughters.

The brief which we have circulated is not particularly lengthy and I would ask you to peruse it when you have the opportunity. In that brief we deal with two issues. First, the inherent shortcomings in arbitration systems and therefore the superiority of collective bargaining systems. And second, some changes which you might consider to the

presents teachers' Collective Bargaining Act to strengthen it.

Let me summarize first for you our views on collective bargaining and compulsory arbitration.

I would draw your attention to page 7 of the brief. What we are concerned about here is the problems that arise when the right to strike is removed, not in the case of a particular dispute, but rather from a whole sector. And we think that that is a road to disaster and unfairness. There is no possibility of making comparisons then in that system if the right to strike is removed from the entire sector. And that is a point we want you to bear in mind.

Now, in supporting the right to strike as an acceptable and irreplaceable element in the collective bargaining process, we would draw your attention to the quotes from Justices Galligan, O'Leary and Smith in the Broadway Manor case. And just to quote you there on page 5, Justice Galligan, he said:

"The freedom to strike is what gives the workers leverage in bargaining with their employers... Their (unions) *raison d'être* is to enable workers to have effective economic clout in dealing with their employers. Employees' ultimate and real weapon is their freedom to strike. When that freedom is removed it is my opinion that the workers' freedom of association is more than merely infringed, it is emasculated."

Now, that is very strong stuff coming from a judge. You would almost expect a trade unionist to have written it, But none less than the judge himself wrote that. And he goes on, or O'Leary goes on, to say in the same case:

"To take away an employee's ability to strike so seriously detracts from the benefits of the right to organise and bargain collectively as to make these rights virtually meaningless."

And once again, that is Justice O'Leary.

So, we would ask you to bear that in mind when you come to look at the whole system to see the right to strike as an essential ingredient in the collective bargaining process.

Now, let us turn to some other changes which you may wish to consider in the present statute -- expedited arbitration and empowering arbitrators to amend the penalty and just cause requirement for dismissal. There is also a need to ensure that a work stoppage is a burden and therefore a deterrent to both parties.

At present, a work stoppage results in an interruption of provincial grant moneys; however, property tax revenues continue to be collected. No school board should ever be in a situation where its costs fall more than its revenue when there is a work stoppage as that may well lead them to cultivate or bring about such an event.

Finally, I want to say a few words about those teachers who are not covered by the Teachers' Collective Bargaining Act. I am referring mainly to supply teachers but also to teachers in the evening programs and in day programs for adults.

At present, these teachers are covered by the Ontario Labour Relations Act. That means if they wish to enjoy collective bargaining then they may do so by joining the union of their choice and voting for that union if there is a ballot. As a practical matter, some of these supply teachers believe that their interests would not be well served by the mainstream federations of teachers. The reason is that supply teachers work part-time and they or at least some of them are fearful that organizations representing full-time teachers will not protect their interests, especially when there are cut-backs and lay-offs.

We believe that such teachers should continue to have the right to choose the representative of their preference. The present legal arrangements allow that. One of the consequences of sweeping all of these teachers under the Teachers' Collective Bargaining Act would be to deny that right to choose. Therefore, we urge you simply to leave the present legal framework for these teachers unchanged.

So that is the extent of our presentation this afternoon, and we are open to responding to any questions the members of the committee may have.

The Vice-Chairman: Thank you, Mr. O'Flynn. Just for your information, I would just like to tell you that nobody came in front of this committee and suggested that we should remove the right to strike to teachers. I hope you understand that.

Mr. Callahan: There was one group, Mr. Chairman.

The Vice-Chairman: He was not speaking on behalf of his Board. He was speaking on his own personal point of view.

Mr. O'Flynn: I would like to do that, Mr. Chairman. We came along just in case by chance the idea might get abroad and might gain ground.

The Vice-Chairman: Thank you. We have some questions

from Mr. Callahan.

Mr. Callahan: Well, first of all I think you have already alluded to this in your brief. You recognize that the circumstances within a school view is different than the economic world where the strike or the labour relations process is different. I think you would agree with me on that?

Mr. O'Flynn: Well, I would be a bit careful about making too great a distinction. I am a teacher myself so I know what the teaching environment is like. I have also worked as a coal miner. And while the circumstances are very different, the working conditions are very different, in terms of labour-management relations, there may well be no inherent difference. There may not be any.

Mr. Callahan: Well, what I am suggesting is the inherent difference is that when a strike occurs in the collective bargaining process of teachers and school boards resulting in a strike that is of the magnitude of Sudbury or recent ones in Wellington and the two other counties, obviously the impact is on the children. That is vis-a-vis the question of strike in the private sector or the public sector where you are talking about really inconveniencing the public or a financial cost to the employer. Surely there is a difference between the two of those processes?

Mr. O'Flynn: Well, in my days when I worked as a coal miner for the National Coal Board, if the coal miners went on strike then the people would freeze in their houses. So that had an immediate impact, too, on society.

Look, teachers are workers and the fact that they happen to be teachers is something that we cannot get away from because that is what they earn their living doing. Now, they teach children and inevitably when there is a conflict, there is going to be an impact upon the students.

Mr. Callahan: Well, let me ask you, following up on that, I am sure that you would agree with me that the prime concern within the Act that is being reviewed by this committee, the prime and probably major, if not the only concern, would be the welfare of the children?

Mr. O'Flynn: Well, that may well be the approach that you take to it. If I were on the committee I would have a concern for all of the actors in the play. That is, I would have a concern for the interests of the public, the interests of teachers and the interests of the students.

Mr. Callahan: You do not put any one of those on a higher priority?

Mr. O'Flynn: Well, it all depends. If you happen to

be a teacher and you have the impression, the perception, that you are being treated unfairly, that will be something which eventually will become the priority in your mind as a teacher.

Mr. Callahan: Well, let us go back. There have been some suggestions made by groups -- albeit I think at the moment we have probably heard in the main, if not in totality, simply from the trustees -- that there may be a protraction of the process, the time within which negotiations take place. You are obviously aware of some of the proposals that have been made in that regard. What would be your comments on that?

Mr. O'Flynn: You mean on contracting the time frame?

Mr. Callahan: Contracting the time frame.

Mr. O'Flynn: Well, it is a bit long. I do not think that it would have any major impact on the system to contract it. I do not think you would find that the teachers' organizations would object to a contraction. John?

Mr. O'Grady: I think what you will find is that if you look at the actual process of negotiations, that serious negotiations takes place within a relatively compressed period of time. What the Act attempted to do in order to encourage settlement was to begin that process of negotiation much earlier on than would normally be the case under the Ontario Labour Relations Act.

What happens is indeed, I think, predictable. The parties do go through the minimum legal requirements to satisfy the Act of serving notice to bargain and exchanging proposals, and then they waste time until, in fact, they reach the 30 to 60 days before the effective expiry of a contract when decisions really have to be made. The actual serious bargaining process I think is already compressed.

Now, you may find that by removing the present statutory requirements that would commence the formal proceedings earlier, you will make a positive contribution. I think you may be dwelling on something which is rather unimportant.

Mr. O'Flynn: We have a lot of experience with the colleges' collective bargaining act in that regard, which covers the community colleges, and it was our experience, as John has outlined it, that is what happened. The bargaining just did not take place -- serious bargaining did not take place -- until there was a deadline there and the deadline in their case was always September, the first week in September. They never got serious about bargaining until that deadline was approaching.

Mr. Callahan: Well, let me carry it a little further. There was a group that came after that that even -- it was the last delegation we had -- that even moved this a bit further by saying that the school year, that it would all take place before the school year started, and the school year would not start if a strike took place. Now, I would like your comments on that. And in other words what you would do is re-adjust, I guess, the school year because there are the summer months that are --

Mr. O'Flynn: Theoretically that is what was supposed to happen in the college system. The contracts were supposed to have been negotiated prior to the beginning of the September session. It never happened that way. There were always deadlines set and deadlines remade.

Mr. O'Grady: The intent of that proposal may be presented in order to encourage settlement, minimize disruption. It seems to me that it rather transparently reduces the economic clout that the teachers could bring to bear in a bargaining situation. Their ability to effect a work stoppage is there and they can stay out as long as they want, and when they get tired of staying out they can go back and then the school year commences.

Well, I suppose if they stayed out long enough they would make it very difficult to get the school year restored even within the amount of time that is left.

Mr. O'Flynn: Not if the proposal that was made was at that time that happened they were not receiving salary but their salary would be received during the protracted period, let us say during the summer, and all they would be doing, really, would be giving up the two or three months or whatever it is the teachers have for vacation.

Mr. O'Grady: Well, not necessarily. One could see a strike under those circumstances going on for a very long period of time until it, indeed, starts impinging on students, parents and the school boards. That strikes me either as a recipe for substantially reducing the economic leverage that the teachers can bring to bear or a recipe for ensuring that strikes are much longer. It does not strike me as a prescription for bringing about settlements in a much shorter period of time.

The Vice-Chairman: Mr. Callahan, I would like to move on to Mr. Allen.

Mr. Allen: Thank you very much, Mr. Chairman. I appreciate the fact that the OFL has come before us with some general concerns which I think are always worth our bearing in mind when we look at any particular sector of negotiation of a collective agreement.

For a moment I thought perhaps there was a bit of a conspiracy here with a O'Flynn and O'Grady and then Justices Galligan and O'Leary and then Mr. Callahan broke ranks and went in another direction.

Mr. O'Flynn: Why do you think we afforded them?

Mr. Callahan: They should have been here on the 17th.

The Vice-Chairman: Some are more affordable than others.

Mr. Allen: Some are more affordable than others; that is right.

But is always important, I think, for us to be brought back to some basic legal and constitutional concerns about the relationship between freedom of association and the right to strike. And indeed if that were to vanish across a whole sector, the issue of comparability would be very major. How would one go about the other processes that are not normally recommended to us to put in place in those circumstances.

With regard to, first of all, the last item that you raised so I can be perfectly clear about your intent with regard to supply teachers, evening teachers and regular part-time teachers, recently -- and if I had had my wits about me I would have brought it with me -- the Divisional Court made a judgment on three outstanding cases or three issue that had been brought under this head in recent years; namely, the Windsor and Ottawa situations and the Humewood Home school teachers who were under the York Board.

Are you familiar enough with that judgement to comment on it? Because as I understand your position, you are saying that present arrangements should stay as they are. Those teachers have satisfactory standing under the Ontario Labour Relations Act and that there is no advantage in them being recognized as regular teachers in the context of the school boards and Teachers' Collective Negotiations Act; is that basically what you are saying?

Mr. O'Flynn: Sure. It is a situation with which we were faced with. These teachers, supply teachers, came to the union and said, "Look; the federations will not have anything to do with us. Will you organize us?" So we did. And some years later the federations decided they had better do something about this themselves and they changed their constitutions to allow them to organize. But they do not seem to have been terribly successful or serious about it, and maybe the reason for that is that there is somewhat of a conflict between the supply teachers and the interests of the permanent teachers.

Mr. Allen: I think there is that. There also has been the question that has been, I guess, up in the air as to whether in fact the Education Act and the School Boards and Teachers' Collective Negotiations Act really did apply to them or not.

And I guess that is what the court has ruled, at least temporarily, and I think it is under appeal again, that they did, in fact, qualify, under Bill 100. So we have to await another legal decision in that regard to know whether that will all wash out.

I am glad to see that you brought up the issue again that was raised for us by the OTF of discharge for just cause. The absence of that in the Act is an oversight and should be there for proper protection. And I just wanted to thank you for introducing the concepts of expedited arbitration and empowering of arbitrators to amend a penalty to us as elements that we should be considering in the course of our review.

Would you finally comment for us on your view of fact finding. We have had a pretty consistent litany from the school boards that fact finding in fact is a major impediment and they suggest that that is true from their point of view and from the point of view of the teachers. When the OTF was here they said, "Well, yes, there are some problems with it, but it is mostly the place it occurs in the sequence of things that it comes right at the very end when everybody knows what the positions are anyway. And when the public, if it ever will know, probably knows too, and all that happens is you have got another round of the same old stuff and then a delay of two months before one ever gets back to really sitting down to seriously look at at issues again.

You have had a lot of experience. I think fact finding has been involved in the college collective agreement negotiations from time to time and so on. What is your view on that?

Mr. O'Flynn: Well, speaking from the experience we had under the Colleges Collective Bargaining Act, a fact finder was never any use to the situation, as far as I recollect. Now, it may be different from the system because the fact finder can fulfill the function of providing some information, which otherwise might not be available to the parties, to the federations. So in that sense it might be useful.

But in our experience the fact finding was an avoidance of the issue. That is our perception of it.

Mr. O'Grady: If I could just add; I think the reason

that the fact finding mechanism has been disappointing to its original proponents is that the fact finders themselves -- First of all the situation that fact finding was intended to address probably never arose.

The situation it was intended to address was when a bargaining impasse occurred because the position that was taken by one party before the other was absolutely unreasonable, and the fact finder, when brining down his or her report, would undoubtedly find that and say so in public in a way that would embarrass the party that was being unreasonable.

There have been very difficult bargaining situations. I do not think that we can say, by any generalization, that those difficult bargaining situations have arisen because the position taken by one party or the other has been completely beyond the pale of reasonable consideration. We can say that in the course of bargaining. I do not think we can say that as a detached judgment on the bargaining process.

Secondly, the fact finders themselves have been reluctant to play the role which the statute appears to assign to them, which is to embarrass one of the parties to get off its position. That is not a role which endears you to one of the parties and it is probably a role which if you play at once, you will not be invited back.

So the mechanism itself, I think, has disappointed those who originally designed it, and it is now largely superfluous, the bargaining process. If anything, it gets in the way.

Mr. Allen: Thank you very much.

The Vice-Chairman: Mr. Johnson?

Mr. Johnson: Just a couple of questions. I am very concerned about the interests and the results of strikes on the students and I feel that when a strike goes on for too long there is absolutely no question that the students pay a price. We are talking about the rights of teachers and the rights of Boards, but it is also very important, in fact, I think the most concerns were the rights of students.

You have not addressed the fact that there should be a termination date for a strike. Should the strike go on forever?

Mr. O'Flynn: Well, I think the legislation, as it is, gives the authority to the Education Commission to make that decision. It says when the strike is on too long according to its determination of when damage is being done to the students.

Mr. Johnson: And it is extremeley difficult to determine that.

Mr. O'Flynn: Sure. It would be difficult for anyone to determine that.

Mr. Johnson: Would you have any objection to some type of mechanism that could speed up the process and shorten the time frame of strikes?

Mr. O'Flynn: Well, I do not know if you are going to succeed in shortening the time frame of the strikes. What criteria one would use to decide that damage? Well, your concern would be that damage was being done to the educational interests of the student and you would have to arrive at some arbitrary time figure and say, "Well, after such and such a date, then it has to end."

I think the situation is a better one like you have now whereby a body which is seized with that responsibility looks at the situation and says, "Yes, I think this is the time to end the strike. It is over."

Mr. Johnson: I went through the strike in Wellington County. A Board was here to make their presentation after. But it went 52 days and by the time it was over, very very few people were happy with the results of the strike.

Mr. O'Flynn: Well, perhaps that is the best result that can come out of that strike. That is, that next time both parties will know that the responsibility is theirs, that it is up to them to reach an agreement, up to them to arrive at a collective agreement, and if they do not, they may well put themselves into a position in the future that they will have as long a strike. But since neither of the parties involved enjoyed that particular experience, there will be pressure on them from both sides to arrive at an agreement in a much quicker time.

Mr. Johnson: Would you think, then, it would be beneficial to have a study to determine the results of the strike and how to avoid it in the future?

Mr. O'Flynn: Well, I think you will not need any study. The people on the Board would know; the trustees would know. They would reflect and evaluate their performance and the teachers' organization would do likewise. That is normal. A union, when it goes through a strike always sits down and says, "Well, what came out of that strike? Did we take the right approach? How would we change it next time? Would we allow ourselves to get into that position again?"

That is the kind of steps that a union takes.

Mr. Johnson: So it is a learning process?

Mr. O'Flynn: Absolutely.

Mr. Johnson: But would it not be beneficial then to take the next step and determine the results that the strike caused to the students?

Mr. O'Flynn: Well, that would certainly be within the power of the trustees to do that. If they wanted to have a look at the impact that the strike had on the education of the students, certainly.

Mr. Johnson: Okay. We can address that next week.

The Vice-Chairman: Ms. Bryden?

Ms. Bryden: Thank you, Mr. Chairman. I would like to congratulate the OFL for coming before us and reminding us that the right to strike is a very important part of collective bargaining, and you did it with some Irish rhetoric from the quotes as well as yourself. So I think it is good for us to start with that position before us this afternoon.

There has not been very much feeling that teachers should not have the right to strike, but there has been suggestions that it should be circumscribed in certain cases.

Mr. O'Flynn: Yes.

Ms. Bryden: My questions relate to this use of arbitration. I think three sections of the Ontario Labour Relations Act that you suggest we might consider incorporating would be very useful and I think we should look at that. And my colleague has already referred to that, that is for expedited arbitration for making it mandatory to give access to arbitration in cases of unjust dismissal and for amending the penalty, and I hope the committee will look at those proposals. And they are the first time they have been brought to us as well.

Also you are not a first but you are a second, on suggesting that the property tax should be rebated in cases where a Board has saved money. We had a very specific proposal this morning from Etobicoke in which there is a case, of course, of bargaining for six Boards together in Metro Toronto, and they did not want the tax rebate to go to all six Boards either. They wanted it to go to whichever Board was struck and I think that is fair enough, but it is something that has not been addressed very much yet.

One problem I have is when you are going to rely on arbitration, as you suggest is necessary in certain cases of

resolving employees' grievances, do you have any say in the selection of the roster of arbitrators or should the workers and the teachers be consulted in that or should it be entirely the job of the Education Relations Commission to draw up the roster without consultation?

Mr. O'Flynn: Well, John?

Mr. O'Grady: Well, first of all, if one were to take the model that is now found in the Ontario Labour Relations Act, the decision on whether to go the channel of expedited arbitration or whether to go down the channel of the conventional tri-partite arbitration would be a decision which is effectively made by the teachers' federation. So they are cognizant of the potential biases, if there are any, in those two channels.

The practice under the Ontario Labour Relations Act is that there are a list of arbitrators who are maintained. There is a commission of sorts which determines who gets on that list and, in general, I would think that people with experience under that Act find that those who are approved as arbitrators have a basis in experience and a record of impartiality.

You will obviously find that some arbitrators have a better reputation on one side of the table than they do on the other. But the system as a whole right now for the selection of arbitrators for the expedited arbitration process is viewed as a system with considerable integrity, and I should not think that one would have any great fears if that were just transplanted over to the school board sector.

Mr. Bryden: What about the problem of delays? I gather the list of arbitrators, the people who do the work, carve certain parts of their time -- it may be a part-time job -- and sometimes it takes a long time to find an arbitrator and that is justice delayed is justice denied. Have you run into that much under the Labour Relations Act?

Mr. O'Flynn: Sure. They are allowed delays under Section 45 itself. There are some problems with the expedited arbitration in that they are obliged to hear a case within a certain time. But after that, they may not even get started with the case on that day and they may just clear up preliminaries. And then it may be some months before the case is actually heard. And then while the legislation lays down when it must be started, the time by which it must be started, it does not have anything to say about when the decision must be implemented.

So that is a problem that exists then, and we have addressed that problem in our submissions to the government on amendments to the Ontario Labour Relations Act.

Mr. Bryden: But you have not found a solution?

Mr. O'Flynn: No, they have not found a solution to it yet. We have a solution to it and that is that the decisions should not be written under expedited arbitration. They should not be written and the case should be heard and the decision should be handed down within 'x' number of days of the last day of hearing. That would do away with some of the untimely delays that have taken place. However, that is a slightly different area.

Mr. Bryden: Well, Mr. Chairman, this is something that we do suggest greater use of single arbitrators appointed by the ERC. We should consider how their reports can be speeded up.

Mr. O'Flynn: Absolutely. It would be great if we were able to get changes in the Ontario Labour Relations Act as a result of this presentation; that would be wonderful. We cannot seem to get them any other way.

Mr. Bryden: Thank you.

The Vice-Chairman: Thank you, Ms. Bryden. I will give myself permission to ask you one question. In regards to principals and vice-principals do you consider them management or should they be apart from the OSSTF or the Association or should they keep on the way they are?

Mr. O'Flynn: Well, I had may experience in the community colleges and not in the school system itself. I would not presume in this matter to usurp the authority and the opinion of the federations. I think they are quite happy with the system which keeps them within their organizations. That seems to work very well for them.

The Vice-Chairman: Very good. I would like to thank you very much, Mr. O'Flynn and Mr. O'Grady, for coming here before the committee?

Mr. O'Flynn: Thank you.

The Vice-Chairman: Thank you. Our second presenters this afternoon are from the Wellington County Board of Education. We have Mr. William Lawless, Chairman of the Board. We have Bill Forsythe, who is the Director. We have K.C. Conrad, Superintendent, and two trustees, I believe -- Mr. Bob White and Paul Young.

Now gentlemen, if you want to come forward and if, for the sake of Hansard, if you would identify yourselves, please. And when you are ready to proceed go right ahead.

Mr. Lawless: Mr. Chairman, ladies and gentlemen, my

name is Bill Lawless. I am Chairman of the Wellington Board. With me here today is our director, Mr. Bill Forsythe on my left. Further on my left is our Superintendent of Personnel, Mr. Keith Conrad. The trustee on my right, Mr. Bob White, and Mr. Paul Young in the rear.

Since our brief was only distributed a few minutes ago, I would propose to go through it and read it and then answer questions on it.

Submission to the Ontario Legislature Standing Committee on General Government, Review of School Boards and Teachers' Collective Negotiations Act.

"The commission is concerned about the detrimental impact of strikes, particularly long strikes, on the students. It is also clear to the commission that the general public is becoming increasingly concerned about this matter. If the federations and boards do not find a way to reduce the impact of strikes on students, the public may soon demand drastic and perhaps unwise government action."

This is taken from a report of a commission to review the collective negotiating process between teachers and school boards known as the Matthews Commission.

The above statement from the Matthews Commission summarizes precisely the position that the Wellington Country Board of Education wishes to present to the Standing Committee on General Government for its review of the school boards and teachers' Collective Negotiations Act, or Bill 100.

While there will undoubtedly be submissions presented on numerous aspects of this Act, the Wellington County Board submission, because of the recent history of a strike, proposes to limit its comments to matters more closely associated with strike-related issues and specifically to procedures that would alleviate the impact of a strike.

The Wellington County secondary school teachers strike in 1985/86 lasted for 51 days. It was the second longest strike in the history of collective bargaining for teachers in Ontario.

While it was difficult for everyone concerned, no group was hurt as much as the students and their families both educationally and socially. Consequently, this submission centers on concerns related directly to a strike and those parts of the legislation which might be improved in order to lessen the damaging effect that strikes have on a community in general but in particular on the students concerned. This Board recognizes the position set out by the Ontario School Trustees' Council. However, while not

denying the major thrust of that report, the Board does wish to alter in part some of the Council's recommendations.

In particular, the Board wishes to make the representation on the following issues: The fact finding process. Second, principals, vice-principals and the bargaining unit. Third, the right to strike. Fourth, defining jeopardy. Fifth, the need to study the affects of a strike. Sixth, legislated termination of a strike or lock-out and seventh, student accessibility under the legislation that extended Separate School funding. And while that may not appear pertinent, we will tie it in later.

Number 1, the fact finding process: It is noted that several organizations have recommended the elimination of the fact finding process in the current legislation. This Board believes that in the least the fact finding process is in the wrong place in the bargaining process and if not eliminated, should be either placed in a more advantageous position or replaced by a procedure that would be more useful in bringing about a negotiated settlement.

The Wellington County secondary school teachers' strike commenced on September the 16th, 1985. The fact finder's report was made public in March of 1985, a full six months earlier. While initially the public was not even aware of the existence of a fact finder's report, when they did obtain a copy, it was apparent that the report was out of date and inadequately addressed the issues then facing the parties in the strike.

It is worth noting that the March date was six and-one-half months after the initial date for the appointment of a fact finder. This Board believes that if fact finding is abandoned, there is a need to replace it by a procedure that will provide for a report to be made by an independent third party on negotiations, immediately prior to the strike.

This report should be available to all teachers and trustees and published widely in the jurisdiction in order that all members of the public, including students, are fully aware of the matters that have been agreed upon and the matters remaining in dispute.

Consequently, the Board makes the following recommendations: That before the teachers vote on the Board's final offer and before the date for a strike is announced, copies of the last offer of both parties be published through the local media by the Education Relations Commission or another neutral body and simultaneously distributed to every teacher and every trustee in the Board's jurisdiction. That would occur in the OSTC model between steps 4 and 5 for speeding up the bargaining

process.

Principals and Vice-Principals - Relationship to the Bargaining Unit: This Board is aware that there are two opposing views on the position of principals and vice-principals remaining as members of the bargaining unit. While it is recognized that principals and vice-principals can be a levelling influence on the branch affiliate during times of high tension, this Board believes that they must recognize themselves and be seen first as managers of their schools with full responsibility to the Board for their activities.

During the strike in Wellington County, considerable stress was placed on the principals as they carried out the dual role of responding to the directives of the Board and senior administration, while maintaining a stance of support and loyalty to the expressed causes of their branch affiliates.

The general public was not sympathetic to their position when they observed them in off-hours on the picket line or appeared to be less than fully helpful when requests for assistance were made.

It is this Board's belief that the present circumstance in a sanction situation is not a healthy one for the principals and vice-principals nor for the image of the Board. The memory of an unhappy incident during the strike can live on long after its conclusion and thus be the cause of less than harmonious relationships with both the community and fellow members of the branch affiliate.

This Board believes that in the least, a clear statement of expected behaviour for principals and vice-principals in a sanction situation needs to be developed. For this reason the Board makes the following recommendation: Number 2, the Wellington County Board of Education recommends that principals and vice-principals not be members of the teachers' federation. However, failing this, the Board feels that the duties and responsibilities of principals and vice-principals during a strike should be clearly defined as suggested in the OAEAO Review, June, 1986. And this was a report on Collective Negotiations Act, a report to the Minister, and that recommendation number 2 in our brief coincides with recommendation number 14 on page 13 of that report.

The right to strike: The Board is not in favour of teachers having the right to strike. However, the Board is cognizant that the alternatives may be equally unacceptable. For example, in the case of fire-fighters, the alternative appears to be compulsory arbitration. This introduces difficulties currently being experienced by municipalities as a result of recent arbitration awards.

As in the case of fact finding, it is noted that parties may negotiate to an arbitration position rather than seeking a settlement. The Board therefore recommends the following: That although the Wellington Country Board of Education prefers that strikes by teachers not be permitted, it recognizes that the alternatives may also be difficult and therefore recommends that a clear definition of "jeopardy" in the case of a strike be stated in order that the Boards, federations and the public are aware of the criteria by which jeopardy will be determined.

Definition of jeopardy: A simple arithmetical calculation can determine the number of hours lost to instruction in relation to the number of days which a strike has consumed. Does jeopardy occur in 10 days? 20 days? One day beyond 50? A calculation made during the Wellington County strike that assumed 49 strike days determined that the number of hours of instruction time remaining in non-semestered schools was 98 hours per course. And for each of the two semesters in semestered schools, the time remaining was 91 hours.

Since the Ministry of Education curriculum guidelines call for 110 to 120 hours of instruction, it was clear at that time that only core topics in a guideline could be covered and that a curtailment of formal examinations and co-curricular activities would be necessary. A letter from the Director of Education to the ERC summarized the situation based on the 49-day strike as follows:

Reorganization of hours of study: The time frame of 110 hours prescribed by the Ministry includes core and optional topics for which there is some built-in flexibility to accommodate the different learning rates of students. Undoubtedly, a sharper focus will be required in Wellington County in the core topics. It should be obvious that a point will be reached where the core topics cannot be properly completed. In the writer's opinion, this point has now been reached.

It is recognized that student motivation to study may be greater than normal and that more home study might be a part of any plan to provide a valid credit. Students will rise to such a challenge but should not be expected to lead a life of solid study. With the increased pressure, the importance of a break from intensive study will be critical to the maintenance of good physical and mental health. Consequently, if we are to present a meaningful learning situation for the students, this strike, in terms of jeopardy, is at a very critical point.

While it is clear that successful completion of the courses of study remain the single most important reason for secondary education, it must be recognized that there are

important social and co-curricular activities associated with secondary school education that contribute to the growth and development of individuals in their teen-age years. Such activities are seriously curtailed in a lengthy strike not only because of the strike, but because of the need, after the strike, to utilize every available hour for necessary concentration on course work.

During the course of the strike, there were indications from the public of the effects that the loss of normal social activities had on many students. This was especially true in the rural settings where easy congregation is not possible. In addition, there were reported incidents of students hospitalized because of the stress of worrying but their future as well as serious family conflicts brought on by the heightened stress of an abnormal lifestyle. Students want and need to be in school.

The Board consequently believes that a clear definition of jeopardy that will provide a better estimate of the educational and social losses to the student needs to be developed. The Board believes that a group of professional educators should be requested to address in this broader context the subject of jeopardy in order that a more in-depth measurement can be made in future strike situations. The following recommendation is therefore made:

Number 4: That a provincial committee composed of members of an organization such as OAEAO, which is the Ontario Association of Education Administrative Officials, be requested to study the issue of jeopardy and recommend a statement of criteria by which jeopardy would be determined.

The need to study the affects of a strike: Subsequent to the return to work, several groups made proposals to deal with matters associated with a strike. While some of the proposals dealt directly with the promotion of harmonious relationships, the Wellington County Board of Education was particularly impressed with the proposal by the University of Guelph to conduct an intensive study of the effects of the Wellington strike with particular emphasis on the problems experienced by the students.

It is the Board's opinion that a study similar to the one proposed by the University of Guelph should still be done. While it is now too late to conduct such a study for Wellington County, the Board believes that such a study should be planned in the event that a similar strike occurs in Ontario at some future date.

I have a copy of their research proposal which they put forward at that time but did not receive funding for. This was dated the 12th of March, 1986.

Legislated termination of a strike or lock-out: The

Board recognizes that the best solution to a stike or a lock-out is for the parties to voluntarily come to an agreement themselves. However the Wellington County Board, perhaps more than any other Board, recognizes that this is not always possible. An unresolvable impasse, as was the case in Wellington County, is a distinct possibility.

There is little doubt that conditions will develop in some jurisdiction in the future at which time a similar impasse will occur. While the first concern of the Legislature should remain the issue of jeopardy to the students' education, a judgment with respect to the ability of the parties to reach an accommodation between themselves in a reasonable length of time may need to be made. In either circumstance -- jeopardy and/or impasse -- the Legislature should have recourse to a procedure by which a strike or lock-out is terminated. It should provide for a method by which the matters in dispute can be resolved.

The Board does not believe that the imposition of the mediator's proposal of November the 10th, 1985, by the legislature was the proper approach to decide the terms of settlement. The Board believes that a better approach, such as compulsory arbitration or a form of final offer selection, would be more palatable and would not compromise a mediator's proposal in his attempt to achieve an agreement between the parties without government intervention.

For these reasons, the Board supports the recommendation contained in the OAEAO submission, which was recommendation number 9 on page 10 of that report.

Our recommendation number 5: That in the event that a strike or lock-out is to be terminated, the government not determine the terms of settlement but rather the settlement be determined by a three-person arbitration board, the chairman of which shall be appointed by the ERC and each of the parties selecting one member of the Board.

Number 7. Accessibility - Bill 30: During the strike in Wellington County, the Wellington County RCSS Board had a number of requests for access to the secondary schools from students whose parents property was assessed for separate school purposes.

In a recent Joint Committee meeting between our Board and their Board, this matter surfaced in relation to the discussion of Section 1360 (1) and (2) of Bill 30, which is appended at the back as Appendix A, with regard to open access to secondary schools for students of conterminous boards.

Members of the Joint Committee expressed concern with the potential for serious consequences resulting from open access if the teachers of one of the coterminous boards were

on strike. While the matter might be addressed by Section 40 of the Education Act -- and this Section is also appended as Appendix B -- through reference to the availability of adequate accommodation, it is not clear that this later section of the Act applies in the open access as set out in Bill 30.

If a Board were required to provide the accommodation and the teaching staff in the incidence of a strike in a coterminous Board, the obvious concern arises that such Board would have not only an excess of accommodation, but also an excess of teachers once the strike was over, assuming the students returned to their original schools at the end of the strike.

On Appendix A, Section 1360 (1) and (2) are pertinent, and Appendix B, Section 40 (2).

Conclusion: The Wellington Country secondary school teachers' strike of 51 days was an experience that no community in Ontario should ever have to experience again. The loss of educational opportunities for students, together with the social upheaval in the communities involved, is too great and the frustrations are too intense to be repeated elsewhere. Steps should be taken by the government of Ontario to reduce the impact of strikes and to assure that contract resolution occurs long before the 51st day.

This submission by the Wellington County Board of Education suggests some amendments that might assist the government in providing procedures by which the impact of a strike would be lessened and the dispute between the parties brought more quickly to a fair and hopefully palatable resolution.

The Wellington County Board of Education believes that the committee should heed the warning of the Matthews Commission; that is on page 1. The general public is becoming increasingly concerned about the impact of strikes, particularly long strikes. It is our joint responsibility to seek ways by which that impact can be moderated.

The Vice-Chairman: Thank you very much. We certainly appreciate your brief; it is very clear and precise. We have some questions for you however, and we will begin with the member for Wellington-Dufferin-Peel, Mr. Johnson.

Mr. Johnson: Thank you, Mr. Chairman. Dr. Lawless, members too, I would like to congratulate you on your presentation.

I have been asking some of the people who have been making presentations about the role of the ERC and if there is some way that you could speed up the mechanism. I know that in the Wellington dispute that, I think in November the

1st, you requested a jeopardy hearing that was denied and then followed through on November the 12th?

Mr. Lawless: Yes. Mr. Director, please.

Mr. Forsythe: Mr. Chairman, that the Chairman of the Board wrote a letter to the ERC on November the 1st is correct and I think a letter of approximately November the 12th, and then there was a response on November the 14th. That letter did ask for a jeopardy hearing. I think it is not correct to say it was denied, there was no just response from November the 1st until approximately November the 14th. At that time there was a statement of some criteria that might be set out in a letter and that was responded to immediately. But it is true that the Chairman of the Board had written the ERC for the first time on November the 1st.

Mr. Davis: Supplementary, Mr. Chairman. Just to clarify, I wanted to ask my question. Mr. Forsythe, as Director, were you aware, as I have been led to believe, that the determination of jeopardy would have to come from you, a letter from you, saying you believed the students were in jeopardy?

Mr. Forsythe: We talked about this the other day as a matter of fact --

Mr. Davis: I know.

Mr. Forsythe: -- and my response to you was I was not aware that the Director of Education was necessarily the person named. What I said was that it was a logical person to formulate the letter.

Mr. Davis: But is that a requirement of the ERC? What you have said -- and I just want to try and clarify this because I think it is an important matter for us to try and clarify -- your Chairman wrote two letters and then there was a response come back that said, "If you follow these criteria --"

From that, I deduce, whether I am right or wrong, that they really wanted a letter from you as a director saying, "This is what is happening in these areas. Therefore I, as an educator, believe the students are in jeopardy."

Mr. Forsythe: I had been in discussion by telephone with the ERC and asked them for a statement of the criteria. They were listed over the phone. I was of the opinion that they were going to come in writing to me and I was waiting for that. Finally they came in writing and I responded to them when I got them in writing.

Mr. Davis: How long after that before there was a declaration of jeopardy? I cannot recall, so --

Mr. Forsythe: I am not certain when jeopardy occurred, but I think it was the Friday before the legislation took hold of it the next week because we had met on the Thursday -- We had met at the Inn on the Park on the Thursday before that. So between my letter, which would be about the 15th, 16th of November, and then we would reach the end of the next week.

Mr. Davis: Thank you.

Mr. Forsythe: We are talking about seven days, I think.

Mr. Davis: Seven days.

Mr. Forsythe: Approximately.

Mr. Davis: Thank you. Thank you, Mr. Chairman.

The Vice-Chairman: Mr. Johnson?

Mr. Johnson: It is my understanding at the time there is no process for requesting jeopardy hearings if the Education Relations Commission decides there is no need for hearings. And second, the Commission does not have to respond to requests for jeopardy hearings.

Mr. Callahan: As a point of order -- I would never interrupt my good friend because he is my good neighbour north of me -- but, Jack, I think that is not fair because the Act itself does not provide for a hearing. The wording is, if in the opinion of the Board -- whatever that Board is -- there is jeopardy, then they do something. But there is no provision; that is a shortcoming obviously. That is something that will have to be addressed by this committee in its report to the Minister. But I would not want to go by that there is in fact provision for a hearing. There never was provision for a hearing.

The Vice-Chairman: As a point of clarification we appreciate it.

Mr. Johnson: Maybe, Mr. Chairman, this would be an appropriate point to suggest that we have the ERC appear before this committee, and we can maybe put some questions to them and maybe Mr. Callahan can prove that his point is accurate.

Mr. Callahan: I am not trying --

Mr. Johnson: Would you be agreeable to have the ERC come before the Board?.

Mr. Callahan: I have no difficulty. I think the

purpose of this committee is to hear, I guess, the whole shooting match. I am not sure whether it will advance our position because we are really going back to ancient history. Hopefully we are going to improve on this situation that existed in the past and provide that type of hearing.

The Vice-Chairman: What we can do is bring it in front of the sub-committee whenever the Chairman is back on the job. I am prepared to do that.

Mr. Johnson: Well, I would like to make a recommendation that we do so.

The Vice-Chairman: Okay. Steering Committee.

Mr. Davis: Let's clarify that after.

Mr. Johnson: It is my understanding that the Wellington Board requested the Minister of Education to allow a study to occur to determine the effect of the strike.

Mr. Lawless: Yes, we did, Mr. Johnson. We requested it and then we supported the research project and study that was suggested by the University of Guelph and that is when they felt confident they would receive money to fund this study and that is where we put our apples, if I may use that expression. And money was not forthcoming for that study and the Board did not provide money for a study itself on its own.

Mr. Johnson: Mr. Lawless, I am at a bit of a loss on this. I understand the University of Guelph were prepared to conduct a study. At one point in time I understood that the Minister, if he did not approve it, he was in the process of approving the study, and at that time or some time frame it was turned over to the ERC?

Mr. Lawless: Mr. Johnson, I am not exactly sure of the mechanics of it. It was my understanding that funding was withdrawn after they thought it was going to be approved. If I am wrong, I stand corrected. If you wish to comment, Mr. Forsythe?

Mr. Forsythe: The only comment I can make, Mr. Chairman, is that my understanding is some negotiations went on between the University of Guelph and the ERC.

Mr. Johnson: About the break down in communications between the University and the ERC?

Mr. Forsythe: That is the information we received from the University of Guelph; that is where it fell apart.

Mr. Johnson: I have a letter from Dean John Vanderkamp that pretty well states that there was a problem.

Mr. Forsythe: Mr. Chairman, if I might. I suspect that that is the same letter that the Board of Education received.

Mr. Johnson: Well, Mr. Chairman, I have only two points I would like to make. I support the idea that we maybe could gain some extremely valuable knowledge by having this study, and as the Board suggested it is too late for the Wellington case, but maybe if this committee were to give consideration to making that a recommendation that in the future, after a strike occurs, that a study could be conducted.

And then the second point is that we have to, in some way, increase the role of the ERC or determine at the jeopardy hearing some way that we do not have to go through 51, 52 days of a strike. And I am not sure how we can do it, but Wellington Board does make a recommendation that maybe is as good as any that we will come up with.

The Vice-Chairman: Well, whenever we reconvene, whether we do make a report or whatever, we could bring it in at that time if the committee desires. We can do that; that is quite easy to do.

The other thing I want to say to you, Mr. Johnson, is as after conferring with our clerk, Ms. Deller -- who has been very helpful to me, by the way -- that we can call on the ERC to come in front of this committee and any other important body that would be relevant to this situation. However, this is our last day in Toronto for hearings. It might be a little bit difficult to hear or receive the people from the ERC from here to the end.

Mr. Johnson: I would think before we make any determination we should definitely spend some time with them because there is a lot of questions that they have to address.

The Vice-Chairman: Fine. Mr. Callahan?

Mr. Callahan: Well, first of all, this is the first time there has ever been a legislative committee review this; I think you will agree with that. In fact, one would have wondered why there was not one after the Matthews Report because it was pretty critical at that time I would say, and Mr. Matthews certainly does not mince words when he says that the public may soon demand drastic action; and yet nothing occurred. One would have expected after a 57-day strike -- I think it was 57 days in Sudbury --

Mr. Lawless: Fifty-six.

Mr. Callahan: -- 56. I was going to say, "What is a day?" but I think to a student a day is very essential when you get to that range of the focus.

What I would like to put to you is that we have all tried to think about a way of dealing with what is jeopardy. And I think it is particularly important, in light of what statements were just made by the OFL, that they view this simply as an ordinary labour mechanism. I suggested to them that there is a component here that does not exist in an ordinary economic collective bargaining process -- the child.

And I would have to equate it to an analogy of a divorce where there is just husband and wife -- no kids. It is entirely different than a divorce where there is a husband, wife and kids.

And the criteria that the courts have always taken with reference to where children are involved is that they take the position of being the pater patrians of children and the key issue is not the parents' concern one way or the other. What is considered is the well-being of the child.

Now I have to ask you -- maybe is is rhetorical question -- but in light of that, certainly that has be key in terms of any definition or any way of determining jeopardy. Would you not agree with that?

Mr. Lawless: Mr. Chairman, through you to Mr. Callahan, yes; I very definitely agree with your remarks. I think the child should be held up here as the most important component in the strike. The previous presenter talked about the federation and the students and parents and he did not mention the Board. I noticed that when he was making his remarks. But there are two definite sides, but unfortunately the group of people who are in the middle and ones to whom the damage is done are the students.

So I think it is essential that somehow -- and we offer one suggestion here; I am not suggesting that is the best one that could be available -- we determine a more exact, a more definite, type of definition for the term "jeopardy." I realize it is very vague and it is, as you say, it is an area here somewhere in between. How do you define it?

I know it will not be easy, but I think it is critical to this process that jeopardy be defined. And I will be more specific; I think a time limit should be placed on strikes because after so many days you cannot cover the curriculum. This was the situation in Wellington. We did our best in the past year to cover the core, and that is the most you can hope to do.

Mr. Callahan: My concern about a time limit is that you then just extend to the magic point where everyone can do what they are doing.

Mr. Lawless: I understand that.

Mr. Callahan: Having said that, I then have to go to the question that has bothered me, and I am only an interloper on this committee but it has bothered me as a parent and also, I guess, as a former municipal politician, is that this process truly is very different than a normal labour relations situation, because on the one hand you have trustees, who are elected who have a responsibility for the public purse but also have -- maybe not up-front but certainly in the back of their head -- the fact that they have to be re-elected.

And it becomes particularly significant these days when municipalities are trying to break out the figures that the trustees have imposed from the cities. And even in my community, suggesting that the school board should collect their own taxes so that the public knows who is imposing those taxes. So that may exacerbate this whole concern that I have even greater.

But on the other side of the coin, you have teachers who are caught between a rock and a hard place too because the majority of teachers that I know are very concerned about their students and want to teach -- not get out and picket -- but also want to be able to negotiate a fair wage for themselves.

So I have to ask you as I have asked other groups, you, as trustees, have you ever felt that that puts you in a difficult position in trying to wear all those hats as a politician, as a protector of the public purse, and as zeroing in on the major concern that you just agreed with me? And I think that is given that this whole Act or this whole purpose is to put the child at the apex and to see that that child is not injured. Does that cause you any concern?

Mr. Lawless: Mr. Chairman, again through you to Mr. Callahan, I think the responsibility of a trustee, whether it is in a strike issue or negotiating mode or just the ordinary operating of the Board, should keep the student uppermost in his mind. The thoughts of re-election, well, I suppose it occurs the same as it does with you ladies and gentlemen once in awhile.

Mr. Callahan: Guilty.

Mr. Lawless: But I can honestly say, when I look back to 1985 and I was not on the negotiating team at that time,

but the people who were, the thought of re-election did not occur to them as anything of any importance during that strike or during the time frame leading up to the strike. Their concern was to reach a negotiated settlement as soon as possible.

I think trustees for the most part -- and I am sure it is true also in your situation -- wear the different hats that they may appear to wear, relatively well. You try to do the best job you can while you are there, and if you are defeated at the polls in a subsequent election, I guess that is the fate of life. So I think that most trustees who sit around that table in their other capacities have the student uppermost in their mind.

Mr. Callahan: Do you think there would be any benefit -- this is my final question, Mr. Chairman; I have a lot of them, but this is my final one, in fairness to other members -- but do you think there would be any benefit in -- because nowhere in the Act, at least in my brief perusal of it, does it say that children are to be uppermost in the minds of this whole process.

Would it assist either within the Act just as a general recital or in defining jeopardy is probably the better place. One of the major considerations even though it is -- We all know that is what it should be -- that that should be one of the major considerations. So if it can be demonstrated that you have only got so many hours in the -- And I think is what is being done, in a sense. If you get to a point where you are 50 per cent into the hours of instructions there is a determination made that jeopardy exists. Do you think that would be helpful?

Mr. Lawless: If it is placed anywhere, obviously the place to put it would be with the discussion of jeopardy. It is a motherhood statement, really, because I think all teachers -- and I say that with all respect -- that that is their uppermost idea also, is the betterment of their students, as do the trustees. I think in our definition of "jeopardy," while that may be included, we have to try and be a lot more specific, if that is possible to be specific in this condition or this definition.

Mr. Callahan: Maybe, before this is all other, all of the trustees and teachers will be able to submit to this committee for their consideration a report to the House of what a definition might be.

Mr. Lawless: I submit to you that the body that we recommended to make that definition or set of criteria are probably as well qualified as anybody, and that is the Ontario Association of Education Administrative Officials, directors of boards of education.

Mr. Callahan: Thank you very much.

The Vice-Chairman: Mr. Allen?

Mr. Allen: Thank you, Mr. Chairman. I appreciate the fact that the Wellington County Board of Education has come before us in the light of their own recent experience to give us their views on the issues that we have been looking at relative to the School Boards and Teachers Collective Negotiation Act.

I guess I smiled when Mr. Callahan referred to being re-elected because as I recall, there was quite a turnover in your own Board, I think, at the time of that strike which, of course, intersected a local trustee election.

Could I first of all turn to the fact finding process. You leave us so tantalizingly dangling in the air by suggesting that if it is not eliminated at least fact finding should be in another place that is more advantageous. Do you have a sense as to where that better place is than when it currently is lodged in the Act?

Mr. Lawless: Yes. First of all, to reply to your first comment, Mr. Chairman, there was a large turnover of trustees on our Board. We have ten new ones. But I would inform you that nine people who were replaced did not run for re-election. Only one official lost a seat because of the strike and that was because he wanted to quit and felt it his duty to stay on. So he ran again and was defeated. So it is not true to say that a lot of people lost their seat because of the election -- only one person out of ten. The other nine, I guess had had enough negotiating and decided to quit.

Have you received a -- I am sure you have -- a memo from the Ontario Public School Trustees' Association? This is regarding the OSTC Bill 100 and Review Committee. They have a recommended model to handle negotiations from the start of when the Notice to Bargain was delivered and right through to when jeopardy or withdrawal of services.

Mr. Allen: Yes, I think we had that this morning.

Mr. Lawless: Yes; I am sure you did. Our plan was to insert the fact finding process if it is used between steps four and five in that recommended model.

Mr. Allen: Three, four and five. And your reason for that?

Mr. Lawless: I think the reasons are covered in our brief. The fact finding process as it occurred in our Board -- one started six months before March of '85, which would be October of '84. The fact finder's report was

delivered in March of '85 and the strike started on the 15th of September '85. So the fact finder's report was totally irrelevant.

The parties had been negotiating during the fact finding process and for a long time afterwards, and many issues had been settled so it was not pertinent to the strike itself. And we feel that if this were done between steps four and five before the teachers voted on the final offer selection, the final offer of the Board, that then the fact finders report would be relevant and it definitely should be made public.

And when we say, "public," we mean circulated to all teachers, trustees, because in the past, the strike, believe it or not, a lot of teachers were not aware of what had been agreed and what had not been agreed upon because they had not communicated it to them. And also advertised in the local media so that the parents and the students in that community are aware of what the issues are and what the Board has offered and what the teachers have offered.

Mr. Allen: Quite apart from the fact finder's report being out of date, would you think it, in terms of your experience, to be the case that the fact finder really tells the public very little more than what is already known as a result of the reporting on the various offers and counter-offers and the full negotiation process?

Mr. Lawless: Well, the way it is now, that is basically true. I was on the elementary negotiating committee that same year we had the strike, and we used fact finding there also and the fact finder's report did lay down some definite recommendations, and he chose to write the report slightly different than what some fact finders do, I believe, and we did use that report as a basis for negotiations and an eventual settlement. Now, it was not exactly the way he suggested but it did serve as a basis.

So there is some merit in it, but certainly in terms of relation to a strike, it is totally useless in the present form, in my opinion, because it occurs much too early and it is not relevant to the situation by the time you get around to a strike.

Mr. Allen: Do I take it from your remarks that fact finding ought legitimately to include recommendations?

Mr. Lawless: Well, if it is going to be useful, I think it should because fact finding is just the basis of putting down the facts that exist; that is true. The public have the right to know what the situation is, but it should be of some help to the two parties as well. The two parties already know the situation -- what they are offering and what the opposition or the other party is offering. So in

its present form I have not too much use for fact finding, for the most part. Do you have any comments, Mr. Director?

Mr. Forsythe: Well, as you know, I was here on Monday and I was a member of another group and that group probably said to you that it has a different position than has just been stated.

Mr. Allen: Okay. Well, just to comment, I thought your suggestion that if in fact we leave the principals and vice-principals where they are, that it could be useful to have a better description of what their situation is in the context of a strike; it would probably help all parties concerned.

This definition of jeopardy, I must say I think that it is extremely important that before one gets into attempts to define jeopardy would you not think that it really would be important for us to complete some of the studies that you refer to so that we have at least some relatively objective data as to what has happened under given strike situations to given students.

My sense is that there is an awful lot of subjectivity around the question of jeopardy. One can obviously make certain mathematical calculations, at which point it is impossible to complete so many instructional units and so forth, and that only gets you so far.

The problem is that the other issues that relate to the personal concerns and development of students -- the relationships that they develop in the community, the problems of the families and so on -- is very much, apart from personal and anecdotal kind of information, not collated, not available. And it is very different, I think, for any of us to ascertain what kind of weight they should be given in the question of jeopardy.

So I take your suggestion about the importance of study very much to heart. At the same time, I have a sense that a lot of parents whip up a lot of anxiety with their children and with the public and with themselves by thinking that the school system is still the way it was when they went to school, when your jeopardy was you lost a year.

And everybody talks about "losing your year. Losing your year," as though that was the reality of the school system, when for, as we know, many young people are all very, if you want to put it down to years, in very odd situations because their credit factors overlap years and all sorts of things. And it would be useful to have jeopardy spelled out, I think, from the point of view of educating a lot of the public about what, in fact, school is now and when it is and is not in jeopardy under certain kinds of situations.

And I think to put it into the context of the realities of the school life as it is lived today would probably defuse a lot of the anxiety that occurs probably too early in a strike. But do you have a comment on that?

Mr. Lawless: I do not know even know if there is a question there except at the end. I agree with your remarks all the way through. As far as educating the parents, I suggest that is a rather large job to change people's opinion of what they think on a certain topic, and probably what schools are like or were like is one of those topics.

Again, it is a very generalized topic. I know we all went through school and we have our conceptions, and I do not suppose my conception would have changed a great deal, even with having children gone through the system, had I not sat on the Board of Education.

So how you would go about educating them, I am not sure if that is the responsibility of the Board of Education. It may well be, but even if you try, I am not so sure you could succeed. But basically I agree with what you are saying.

Mr. Allen: I think you are acknowledging there is a task there to be dealt with.

Mr. Lawless: Yes.

Mr. Allen: It may be difficult, but nonetheless it is an important part of defining it and helping the community come to grips with jeopardy.

Mr. Lawless: Jeopardy, I even looked it up in the dictionary, and there is nothing that applies really to the situation which we are talking about. It is a word that is pulled perhaps out of context, and it is the word we use here and it is a very difficult word to define, and it is going to be even more difficult to set a criteria by which it is judged.

Mr. Allen: Thank you very much.

The Vice-Chairman: Mr. Davis?

Mr. Davis: Thank you, Mr. Chair. Just a couple of questions. A comment to my learned friend Mr. Callahan that --

The Vice-Chairman: Now, do not --

Mr. Davis: Well, I just want to clarify something for you, that it was on December the 16th, I believe, 1985, when a concern expressed for students in review of Bill 100 was

made, and it took the present government a year and three months and lots of in-fighting and --

The Vice-Chairman: Mr. Davis, please direct your questions --

Mr. Davis: Well, Mr. Chairman, I just want to make sure that we understood --

Mr. Callahan: You are too busy responding --

The Vice-Chairman: Order.

Mr. Forsythe: Are we through now?

Mr. Davis: I would like to come back to jeopardy for a moment and ask the Director, Mr. Forsythe, if this is not true, that although a student does not lose their year in respect to subject matters, in fact a student loses a year in the completion of the length of whether it is -- a four-year or five-year they are taking -- in respect that if they lose a credit or two credits, they drag them but they have to make them up.

And they make them up in one of two ways. They either make them up in summer school or they make them up in a semestered school for half a semester, say from September to the end of January, after they have completed their course. Would that be right?

Mr. Forsythe: Assuming they missed the entire credit.

Mr. Davis: Yes.

Mr. Forsythe: I think that is what you are referring to.

Mr. Davis: That is what I am referring to, yes.

Mr. Forsythe: We did have a number of students who (a) took a credit in the summertime or, in fact, we had students who had completed the program successfully but still took the credit in the summertime.

Mr. Davis: So there is --

Mr. Forsythe: It is true; if you missed the credit it is likely, in the semestered situation, you are going to kick over for another single semester to get all of your credits.

Mr. Davis: Now, if you are not in a semestered school -- you are in just the traditional school -- you then would have to make it up some other way. But once you miss a credit you have got to make it up.

Mr. Forsythe: Yes.

Mr. Davis: And you either make it up in summer school or you make it up in an additional year or half a year, if you can get to go to summer school.

What I am trying to get at, is what Mr. Allen says is true, except that you do not lose a whole school year but you lose time. So if a student enters grade 9 at the age of 13 and assumes that he is doing a 5-year course and he will graduate when he is 18, and there is a strike in there in which the student loses a credit or two credits, then that time frame can be extended beyond that period of time and must be extended beyond that time to make up that credit.

Mr. Forsythe: In some form or other, Mr. Chairman. It might be a summer school; it could also be a continuing education situation of an evening class as well.

Mr. Davis: Okay. All right. My other question to you is this: When we talk about the definition of "jeopardy" -- and I concur with my colleague, Mr. Allen -- that one of the deficiencies --

Mr. Callahan: You shocked me there for a second. I thought were concurring with me.

Mr. Davis: Hardly likely.

The Vice-Chairman: I was in shock too.

Mr. Davis: The deficiency of our system has been the inability -- not the ability -- I guess on the part of either the government or the ERC because I am not quite sure who has power to insist that when strikes have gone on for long periods of time, there is an external review of the community and of the whole process. So you have no data bank to look at in order to address some of the concerns that Mr. Allen raised, which I think are very proper concerns.

But suppose for a moment we define "jeopardy" in some format which says that if these conditions exist within a given educational jurisdiction, then the ERC would say that that is the criteria for the ERC to make a determination of jeopardy or not.

Do you believe that the definition would therefore protract the disagreement or the strike while the trustees wait until those criteria are met?

Mr. Forsythe: Mr. Chairman, I think the question is almost identical to, after "x" days, jeopardy will occur.

Mr. Davis: Okay.

Mr. Forsythe: All right?

Mr. Davis: Right. Can I put it then this way? If we were able to define jeopardy in some format because I believe that is imperative, would it be beneficial then to ensure, as the Matthews Report suggested in a funny way, that the ERC monitors much more stricter the negotiations, as you are in the strike part, so that it can prevent either party protracting it, waiting until it gets to that stage?

Mr. Forsythe: Two things. First of all, I think there should be closer monitoring in a situation where a strike was getting to the stage where the Wellington County Board of Education strike got to -- and I am not going to mention a number of days, but it got to a stage where somebody should have been saying, "Hey, can anything happen here?"

When I was implanted in the middle of it, I was the eternal optimist, "We will go back to the table and we will resolve this thing." Reflecting back on it, I think there was an irreconcilable impasse sitting in there. So I do think there should be an external monitoring of some sort that says, "These people have reached an impasse situation and nothing is going occur to bring this around."

Mr. Davis: Okay. Thank you, Mr. Chairman.

The Vice-Chairman: Thank you, Mr. Davis. And on that, we would like to thank the Wellington County Board of Education for appearing before us today. We certainly are thankful for your brief. It is going to be a little bit easier for us to make our recommendations or our report, whichever one we decide to do.

Thank you very much.

Mr. Lawless: Thank you, Mr. Chairman.

The Vice-Chairman: Mr. Davis?

Mr. Davis: Mr. Chairman, my colleague Mr. Johnson asked about the ERC coming before us. Your response was they could come before a steering committee?

The Vice-Chairman: No, no. Yes, I said that at first but I was wrong. What I say is we can get anyone to appear before the committee. The only problem we have is that right now this is our last day in Toronto.

Mr. Davis: And then we go out.

The Vice-Chairman: We are doing Windsor-Ottawa --

Mr. Davis: Windsor and Ottawa --

The Vice-Chairman: -- Sudbury and Ottawa. And then --

Mr. Davis: But when we come back we have no time; correct?

The Vice-Chairman: That is right.

Mr. Davis: Is it possible for you, Mr. Chairman, to ask the Clerk if it is possible for the ERC to appear before us in maybe Windsor or Sudbury? Is there a time frame for them to do that?

The Vice-Chairman: If it is the wish of the committee, we can ask them, for sure.

Mr. Davis: Well, I think Mr. Callahan agreed that it would be imperative for them to come and sit for us.

Mr. Callahan: I did not say it would be imperative.

Mr. Davis: Well, you said it would be a good idea.

Mr. Callahan: I have no objection to it, but I am not even on this committee so I do not even have a vote or a say.

The Vice-Chairman: What have you been doing here?

Mr. Davis: Or could the Clerk maybe give us an indication of how we could have them before us after we come back?

Mr. Callahan: I often wonder -- if I can just interject for a second -- I often wonder if the people you want to ask are the people who have had that responsibility up to this point and have not been able to define it or at least apparently.

Mr. Davis: Well, they have criteria.

Mr. Callahan: Well, that is what we need, is the criteria, fellows. I think we all agree on that.

Clerk of the Committee: I can pursue the possibility with the ERC of sending someone to Windsor. The alternative is to wait until the House comes back when this committee gets together to make up recommendations or a report to the House on this issue. Before we start to do that we can have the ERC before us then.

Mr. Callahan: That is probably a better way to do it,

if I could interject too, because everything is in at that point. Everything is in, and, I think Jack's comment, at the end before you do your report. Everything is in; you have heard from everybody. Maybe you will get some new ideas from -- some group that comes in will give you some good criteria. You do not want to muddle up before that --

Mr. Allen: Mr. Chairman --

The Vice-Chairman: Yes, Mr. Allen?

Mr. Allen: I think my sense of the utility of doing this is really that if that occurs at the end of the process, if the ERC were to come here and to tell us what it thinks of what everybody has said to date -- half way through the hearings -- then their remarks will be the focus of every other brief that came along, and I think that would be improper. We inject an element into the discussion that I think should not happen at that point in time.

Mr. Johnson: Mr. Chairman, I --

The Vice-President: Mr. Johnson?

Mr. Johnson: -- concur with Mr. Allen that after we are through with all the hearings, then we can relate to the ERC some of the concerns that have been expressed. They may or may not be able to help us, but certainly to talk to them will not be any bother.

Mr. Davis: Can I clarify one thing then, Mr. Chairman. I would defer to that suggestion that they come at the end, but will that require a House Leaders' agreement?

Clerk of the Committee: Well, for the discussion of this particular topic, the House Leaders have given this week and next week as the time frame. It would mean when the House comes back, putting a request into the House leaders for authority to sit on the regular sitting days of this committee, which would be Thursdays, and use some of that time for the continuation of this issue.

Mr. Callahan: We are a standing committee and we are not restricted from sitting hearing the sittings of the council.

Mr. Offer: (inaudible)

Mr. Davis: I would like to hear what Mr. Offer was going to say.

Mr. Offer: Well, basically I agreed. I understand that we have two weeks where the House Leaders have agreed this week and next week is to determine Bill 100 while the

House is not sitting, and I do not think the committee actually has the mandate to extend a day or two on Bill 100 while the House is not sitting.

Clerk Of the Committee: That is right.

Mr. Offer: But when the House reconvenes, then this question can be taken to the House Leaders that this particular committee wishes another one or two or three or four or five days for the purpose of writing a report or having the ERC come.

Mr. Davis: Could I ask for a point of clarification?

Mr. Callahan: Do not get paranoid, Bill.

The Vice-Chairman: Okay.

Mr. Davis: When this committee reconvenes, is that when the report is then written? Mr. Chair, through you to the Clerk.

Clerk of the Committee: After the house comes back?

Mr. Davis: After the house comes back.

Clerk of the Committee: Well, that will be one of the things before the committee to do, yes.

Mr. Davis: Okay. And at that point we could ask them because I understand and Mr. Conway is on record and I am sure Mr. Conway would be in complete agreement with his colleague Mr. Offer that the committee has the right of ordering its own business.

Clerk of the Committee: Oh, yes.

Mr. Davis: So therefore, if a request came before the committee the committee could then say, "Yes, we would like to hear the ERC and then the time frame.

Clerk of the Committee: This issue is before the committee until the committee is finished with it.

Mr. Davis: Okay. All right. That helps. Thank you.

The Vice-Chairman: All right that is it. Okay. We will adjourn the committee until Monday, in Windsor, at 2 p.m.

The committee adjourned at 3:41 p.m.

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G-43

STANDING COMMITTEE ON GENERAL GOVERNMENT

PENSION BENEFITS ACT

TUESDAY, APRIL 7, 1987

Morning Sitting

STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: McCague, G. R. (Dufferin-Simcoe PC)

VICE-CHAIRMAN: Guindon, L. B. (Cornwall PC)

Fontaine, R. (Cochrane North L)

Grande, T. (Oakwood NDP)

Lane, J. G. (Algoma-Manitoulin PC)

Lupusella, A. (Dovercourt L)

McClellan, R. A. (Bellwoods NDP)

McKessock, R. (Grey L)

Offer, S. (Mississauga North L)

Pollock, J. (Hastings-Peterborough PC)

Sheppard, H. N. (Northumberland PC)

Substitutions:

Bernier, L. (Kenora PC) for Mr. Sheppard

Hennessy, M. (Fort William PC) for Mr. Pollock

Smith, D. W. (Lambton L) for Mr. Fontaine

Clerk: Deller, D.

Witnesses:

From the Ministry of Financial Institutions:

Kwinter, Hon. M., Minister of Consumer and Commercial Relations and Minister
of Financial Institutions (Wilson Heights L)

From the Pension Commission of Ontario:

Kruger, J., Chairman

Salamat, G. P., Superintendent of Pensions

Cooper, J., Legal Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

Standing Committee on General Government

Tuesday, April 7th, 1987

The committee met at 10:06 a.m. in room 230

CONSIDERATION OF BILL 170, AN ACT
TO REVISE THE PENSION BENEFITS ACT

Mr. Chairman: We will commence hearings on Bill 170, the Act to revise the Pension Benefits Act. The Minister has a short opening statement. Mr. Kwinter?

Hon. Mr. Kwinter: Mr. Chairman and members of the Standing Committee on General Government, I am very pleased that after so much work we have reached the stage of public hearings for Bill 170, an Act to revise the Pension Benefits Act.

As you know, Bill 170 brings many important and welcome reforms to pension plans. Bill 170 is a complex Bill and fortunately officials of the Pension Commission of Ontario and the Ministry of Financial Institutions are here today to give us a comprehensive presentation. I understand the presentation will provide an overview of the highlights of Bill 170 and background information as to how the consensus on pension reform was reached. I can assure you that there will be ample opportunity for questions following the presentation.

May I now introduce, John P. Kruger, the Chairman of the Pension Commission of Ontario; Robert Hawkes, Superintendent of Pensions; Gemma Salamat, the Director of Pension Plans, Jerry Cooper, Legal Counsel to the Pension Commission; and Julie Jai, the Manager of Policy Co-ordination for the Ministry of Financial Institutions.

Thank you, Mr. Chairman. Now proceed.

Ms. Salamat: Okay. This morning I just want to tell you a little bit about the legislation in Ontario. Legislation setting out minimum standards for employment pension plans was first introduced in Ontario in 1965. You should note that employment pension plans are voluntary arrangements in that an employer is not required by law to have a pension plan. Ontario was the first jurisdiction in Canada to take such action, and subsequently the federal government and other provinces, except for Prince Edward Island and British Columbia, followed with essentially similar legislation.

The minimum standards in the legislation covers such matters as when a pension promised to a worker becomes a

right, otherwise known as "vesting;" how an employer must finance or fund the pension promised to individuals; and how pension assets or funds must be invested. Except for certain minor housekeeping changes and the introduction of a program called, "The Pension Benefits Guaranty Fund," the legislation has remained essentially unchanged.

The Guaranty Fund is an Ontario fund, one of five such funds in the world which provides certain Ontario workers in bankruptcy situations with certain promises. Where a pension plan is wound up with insufficient assets, the Pension Benefit Guaranty Fund picks up some of those deficits.

The Pension Commission of Ontario is the body established in the Pension Benefits Act as responsible for ensuring that an employer complies with the legislation. The legislation governs all pension plans provided for workers in Ontario including those public servants employed by the government of Ontario, Ontario municipalities, teachers and hospital workers.

To give you an idea of the span of our regulatory control, the Pension Commission of Ontario administers ten and-a-half thousand pension plans covering almost two million Ontario workers. Accumulated assets of these funds are in excess of \$60 billion at the present time.

During the next days you will be hearing pension terms such as "pension plan," "vesting," "locking in," "funding," "portability" and "transfer rights" which, simply put, are very confusing terms to those of us who are not familiar and who do not work within the pension industry. Therefore, I want to just briefly explain what these terms mean.

A "pension plan" is an arrangement or contract to provide an individual or group of individuals with a life income or a pension benefit upon retirement. A pension benefit is the amount of the monthly, annual or periodic payment to an individual. We will talk about the value of a pension benefit. This is the amount of money needed at a particular time to provide the individual with the pension benefits promised at the normal retirement date as specified in the plan.

"Vesting": Vesting in relation to a benefit under a pension plan means that an employee has earned the unalienable right to that benefit promised under the pension plan. When vesting occurs, the member's benefit is normally payable at a retirement date as is specified in the pension plan.

"Locking in" means that the pension benefit or the value of the pension benefit cannot be withdrawn in cash, and the benefit or the funds must be used to provide the

individual with a life income.

"Portability" or "transfer rights" is the ability of an individual to transfer the value of the pension benefit from the employer's pension plan to another arrangement.

Also we will be using, for simplicity's sake, terms such as "pre-reform benefits or service" and "post-reform benefits, service or membership."

Simply put, "pre-reform benefits" means the accrued pension benefits with respect to employment earned prior to the date of proclamation and "post-reform benefits, service or membership" means the pension benefits, service or membership in respect of employment after a date of proclamation.

A long time ago, as far back as in the mid-'70s, it was realized that the pension benefits legislation did not meet the objective for which it was originally intended, and there was a great demand for improved minimum standards. Of particular concern was the lengthy period of time for which an employee must wait before acquiring vesting rights. The current standard of age 45 with ten or more years of service meant that few terminating workers received vested benefits.

Also, another concern was that for those workers who terminated and who did satisfy the conditions for vesting, the legislation did not provide portability or transfer rights. This debate for better pensions has raged over the past ten or twelve years ago and has resulted in improved legislation for Ontario workers.

In Ontario there has been many studies including the Royal Commission on the Status of Pensions in Ontario, the Select Committee on Pensions of the Ontario Legislature and Ontario Proposals for Pension Reform. There have been similar activities in other jurisdictions and in particular by the federal government. Most of the major studies in Canada focused on four or five key areas. The need for improved standards in these areas involved coverage. It was felt that not enough workers were covered by employment pension plans so that too many individuals ended up depending on social assistance programs.

Inflation protection was another area. It was felt that pension plans needed to preserve in some manner the purchasing power of pensions which have been eroded by inflation. Vesting and portability -- and I did touch on that before -- it was that because of the increasing mobility of workers, there had to be improved standards so that workers who changed jobs will have accumulated pension benefits and must be able to transfer those pension benefits elsewhere.

Another matter to be considered was the effect of pensions on women. The legislation had to address the specific needs of women who were at that time becoming an increasingly significant proportion of the paid labour force.

While pension legislation enacted by the different governments across Canada began with essentially similar legislation, in time the legislation became non-uniform and for employees with pension plans in multiple jurisdictions and for the pension industry at large who had to operate from coast to coast, there was an outcry for uniform legislation across the land.

As a result, the provinces and the federal government entered into negotiations and discussions to develop a set of uniform pension standards and this did result in the achievement of the majority consensus. The provisions of this majority consensus are included in the legislation which you are about to review.

The term "majority consensus" is used because total and absolute uniformity could not be reached on each and every provision. Indeed, many of the pension reform initiatives in the legislation have been overwhelmingly endorsed by business, labour and employee groups.

It should also be noted that during the negotiations and discussions to develop the Canada-wide consensus that each jurisdiction went into the discussions with a set of stated positions. For example, Ontario wanted mandatory inflation protection and vesting after five years of service. The final majority consensus provided vesting after two years of plan membership, no inflation protection and a minimum of 50 per cent of the cost of the pension promised to the worker to be borne by the employer.

The federal government and the province of Alberta have already passed their respective legislations covering the majority consensus. Other provinces have, in part, passed some of the initiatives and others are in the preparatory stages of introducing their legislation.

A consultation draft of the proposed legislation was widely circulated in March, 1986, to the pension industry. We did receive hundreds of submissions after which a review was undertaken and revisions done to incorporate suggested technical changes. These changes did not affect the majority consensus positions.

You should also note that in the process of consultation in cooperation with the other provinces and the federal government, regulations have been prepared and a circulation of the drafts been sent out in February for comments.

And now, with that as background, I turn it over to Jerry Cooper who will take you through the majority consensus provisions.

Mr. Cooper: Thank you, Gemma. Bill 170, as Gemma has indicated, was designed to incorporate the principles of the majority consensus reached by the regulatory officials. It was also designed to bring the Pension Benefits Act into line with requirements mandated by the Charter of Rights and the proclamation of the equality section, Section 15 of the Charter of Rights.

In the package of materials that we have provided to you, in my portion I have done a summary, a paper, entitled "An Overview of Bill 170" where I go through the Bill and highlight various provisions. Also attached to that overview is a document that says, "Summary, the Pension Benefits Act, 1986," and this is a review of the Bill in bullet form where we just have basic principles set out. The asteriks beside a principle indicates that it is a consensus item.

In the time we have this morning, I am not going to try to attempt to go through the Bill section by section. Gemma and I have been through that exercise; it would take the better part of the day. What I do plan to do is go through this summary and bring to your attention the consensus items and changes in principles of administration and regulation that are reflected in Bill 1970.

If you check in the table of contents there are 15 headings, and I will go through the Bill in these parts and mention a heading and then discuss certain provisions found in that part of the Bill.

Skipping the Definition section, going to Application, as Gemma mentioned, this Bill binds the Crown as the current Pension Benefits Act binds the Crown. I believe Ontario is the only jurisdiction in Canada that makes similar requirements for both public sector and private sector pension plans.

Registration and Administration: The Bill formalizes the registration process and establishes the requirement that each pension plan must have someone designated as an administrator and sets out responsibilities of that administrator. It also sets out in Section 10 of the Bill basic minimum issues that each pension plan must focus on, such as who is responsible for paying costs of administration, what the benchmark normal retirement date should be under the plan, the method of determining benefits and obligations under the plan, the method of calculating interest to be applied to member contributions under the plan.

Section 19 of the Bill is an important feature. Right now, as Gemma indicated, there are in excess of 10,000 registered pension plans in Ontario. This Bill is going to require probably in excess of 99 per cent of them to make some amendment to bring itself into conformity with the requirements of pension reform. Section 19 mandates that plans have two years to make the necessary physical amendments to their plan.

In the case of collectively negotiated plans, there is a maximum of three years. The reason for that is that it was felt that collectively-bargained plans should not have to open up the collective agreement for the sake of making the physical amendments. However, the time period is only for making the amendment to the pension plan. When the Bill is proclaimed each plan administrator must administer the pension plan in accordance with the requirements of the Act and the Regulation, and this reflects a philosophical change taken in the Bill.

The current Pension Benefits Act states that in order to be registered, a pension plan must have certain minimum contractual provisions. This Bill states that plan members have certain rights, obligations and entitlements provided by statute. So it is the statute that prevails whether the plan is in conformity with the statute or not.

The standard of care related to the administration of the pension fund and the pension plan is established. And also in Section 25 we reach the first consensus item which is the establishment of advisory committees for pension plans. A majority of members of pension plans may require the appointment of the advisory committees. These committees will have authority to monitor the plan, including the investment of the pension fund, and make recommendations. They will have access to all the information they need to perform this function.

Part 4 of the Bill is entitled "Disclosure of Information" and Sections 26 to 31 are included in this part. The major changes here include the requirement that plan administrators notify plan members prior to the registration of any amendment which could potentially have an adverse effect on the accrual of pension benefits under a plan.

Also under Disclosure, trade unions are entitled to access to information a plan member is entitled to, and spouses of plan members are also entitled to access whatever information a plan member would have access to. The reason for this is that pension plans, as you know, have now been made a family asset under the Family Law Act, 1986.

Sections 32 to 35 of the Bill deal with membership.

There are two consensus items set out here. Currently the Pension Benefits Act is silent on eligibility for plan membership; it is left entirely to the plan. The Bill 170 says that where there is a plan provided that each person who is a member of the class of employee for whom the plan is provided is entitled to membership in the plan after 24 months of employment with the employer. So there is this maximum period for eligibility to membership in a plan.

There is a similar provision for part-time members. They are entitled to membership in the plan after 24 months of continuous employment, but there is an earnings-related criterion here. The earnings-related criterion is that in each of two years, the part-time member must have earned 35 per cent of the year's maximum pensionable earnings, Y.M.P.E., which is established, I believe, under the Income Tax Act, currently 35 per cent of the Y.M.P.E.. I think for 1987 it is \$9,060. An employer would be permitted to maintain separate plans for full-time members and part-time members but the plans must be reasonably equivalent.

Retirement and Vesting: Again Section 36 to 39 here, the key provision here is the change from minimum forty-five and ten vesting, page 45, with ten years of service, to two year vesting, two years of membership in the plan for vesting of all post-reform service and, in this case, I believe the proposal would be for all service relating to the period after January 1, 1987.

I will get into timing of implementation at the end of my discussion because the Bill was drafted with the hope for January 1, 1987, effective date. It is now past that point of time and dates within the Bill will have to be changed.

Benefits, Sections 40 to a 55, which is the real substantive part of the Bill.

Section 40. This section provides that an employer must fund at least 50 per cent of the post-reform benefit earned by a terminating member. For example, on termination of employment, a member who is entitled to a deferred pension would have the value of that pension calculated, and if it turns out that member contributions for the provision of that benefit were in excess of 50 per cent of the value of the benefit, the member would be entitled to the excess between 50 per cent and whatever percentage he or she paid into the plan.

Section 42 establishes an early retirement option for all persons who terminate on or after the proclamation date. If that person is vested or entitled to a benefit, that person may opt to choose to receive a pension at any time within ten years of the normal retirement date established under the plan for receipt of a pension. That benefit, of course, would be actuarially reduced, but it is the right to

receive something. The normal retirement date under a plan is 65. The terminating member could choose to receive a benefit at the age of 65.

Section 43 deals with transfer rights on termination. A person who is eligible under this section may apply to have the value of his or her pension benefit transferred to another pension plan where the administrator of the other pension plan will accept the transfer or into what we call a "prescribed retirement savings arrangement." Right now that would be something similar to a locked-in RRSP.

The pension plan regulators in Canada are working with the industry to have a specific vehicle established to receive pension benefit values so there will not be any confusion between RRSP's and this other type of retirement savings arrangement. And this other type of savings arrangement would have all the special features that are now mandated for pension plans.

The ability to transfer the value of your pension will be subject to certain restrictions that will be established by a regulation and will relate to the solvency of the plan. The draft Regulation states that in any event a member should be able to have all moneys transferred out within five years of the date of termination.

Also, the right to transfer out of the plan will not apply to persons who are eligible to receive a pension under the plan, and those would be persons who are entitled to retire under the plan or who would be within ten years of the normal retirement date established under the plan. Again this is a consensus item.

Section 45 of the Bill establishes a consensus item of mandatory joint and survivor benefits. This means that where a pension is payable to a member who has a spouse at the time payment of the pension commences, that pension must take the form of a joint and survivor pension unless the parties, both parties -- the member and his or her spouse -- opt otherwise.

The joint and survivor pension means a pension is payable during the joint lives of a member and his or her spouse and reduces to no less than 60 per cent on first death. For example, if under a pension plan a member was entitled to \$1,000 a month -- and I am going to give you some figures and they are accurate figures -- if a member was entitled to a pension of \$1,000 a month, the joint and survivor requirement could mandate that the initial pension payable to the member would be \$850 with a survivor component of \$550 when the member dies. And that will be the form the pension has to take unless the parties opt otherwise.

Section 48 establishes the consensus item that remarriage, the remarriage of a person who is receiving a survivor benefit under a pension plan does not result in the termination of that pension. And again a consensus item. Some plans do provide that remarriage of a surviving spouse results in cancellation of benefits.

Section 49 of the Bill establishes the consensus item of a pre-retirement death benefit. This benefit will relate to post-reform service and establishes that a person who is a member of a plan and who dies before receiving a pension will be entitled to a minimum benefit for post-reform service. The benefit will be payable to the spouse. If there is no spouse, the member will be able to select a beneficiary, and if there is no spouse, no beneficiary, then the money would go to the estate of the deceased member.

Section 52 is brought in to reflect the fact that pension benefits are now family assets under the Family Law Act and could conceivably be subject to court orders requiring a split in benefits. The philosophy of Section 52 is that pensions should be retained as pensions; they should be income in retirement. And what Section 52 proposes is that if it is absolutely necessary to require the split of an individual's pension, then payments out of the plan will not commence until the member is actually receiving the pension or has reached normal retirement date under the plan. It is an attempt to preserve pensions for income and retirement.

Section 53 is a charter-related provision which would prohibit discrimination on the basis of sex. It would mandate equality in benefits to persons of different sex who are retiring at the same period of time in similar circumstances. The administrator would no longer be able to reduce the pension benefits payable to a female member on the basis that the actuarial tables indicate that women could live longer than men.

Section 54 of the Bill -- and I guess I will mention that I think during the course of the hearings you are going to be hearing a lot about this provision -- would prohibit discrimination on the basis of marital status. This is a provision -- again, we think a charter-driven provision -- which would mandate equality in the value of pension benefits between persons who have a spouse and those who do not.

It would only affect those pension plans which have a joint and survivor benefit, as what is called the normal form of benefit where there is an automatic survivor option. That means that the value of the benefit which a person who has a spouse is entitled to on termination would be greater than the value of the benefit of a single person. This provision has stirred a lot of controversy and you will be

hearing about it.

Section 55 of the Bill relates to establishing a formula on how pension plans which have offsets or are integrated with the Canada Pension Plan or the Quebec Pension Plan or the Old Age Security Act are to calculate how the offset or deduction is to be made.

Contributions: Sections 56 to 63 here. A key element here is a requirement on the plan administrator or any person who is receiving moneys which are payable into the pension fund to notify the Pension Commission if those moneys are not coming in when they are supposed to. Draft regulations also propose that plan sponsors are required to put moneys into a pension plan on a monthly basis as opposed to the current annual basis. So this is put in to help the plan members as well as the Commission monitor whether required contributions are coming into the plan as they are supposed to.

Section 59 establishes the consensus item that all member contributions will be credited with interest, and there has already been a regulation or there will be a regulation proposed under the existing Pension Benefits Act to establish a minimum rate of interest for the 1987 fiscal year.

Locking In: Sections 64 to 68. This is basically a reiteration of provisions currently found in the Pension Benefits Act. Once you are vested, or at least statute vested, your contributions are locked in. Plans which provide for vesting earlier than the statutory minimum may require that member contributions be locked in at the time they are vested or may state that contributions are not locked in until the member is statute vested.

The protection that is currently given to moneys in pension plans in that they are not subject to attachment or garnishment or any other type of execution except for the enforcement of an order of support under the Family Law Act, is continued and also will apply to those vehicles to which a member may have transferred his or her interest in a pension plan.

Winding up: Section 69 to 78. Most of the material in here is administrative. The notice requirements that must be followed where there is a voluntary windup of a plan is new. There is more specifics on those circumstances where the Superintendent may order a plan wound up, and there are increased disclosure provisions related to plan windups that are set out in the Regulation.

The existing Act sets out that certain members who are involved in a plan windup are entitled to special provisions, and those persons are those who are statute

vested -- forty-five and ten. The philosophy behind this is that older, longer-service employees may have a more difficult time in finding subsequent employment and the provision, which is Section 75 of Bill 170, provides certain enhanced features on a windup. But we are going away from forty-five and ten, which is age-related and may contravene the Charter to a magic number of 55 and that 55 would be composed of a combination of age and years of employment.

Surplus: Sections 79 and 80. This is a codification of the existing Pension Commission policy related to surplus reversion either in an ongoing situation or on plan windup. As I indicated before, pension plans will now have to address certain minimum subjects in the plan and treatment of surplus in an ongoing situation and on windup will be one of them.

The Section 80 does provide that if after January 1, 1989, a pension plan does not specifically provide for surplus reversion to an employer in an ongoing situation, the Commission will not consent to any surplus that has accrued after January 1, 1987.

It also states that if after January 1, 1989, a pension plan does not specifically provide for reversion of surplus to an employer on wind up, the surplus must be distributed among plan beneficiaries.

Sales, Transfers and New Plans: Sections 81 and 82. This is a new feature of pension legislation. The existing Act and Regulations are, I think, silent on how transfers of funds between plans where there is either a sale or merger of a business or even the transfer between plans where there is an original plan and a successor plan is to take place.

The commission is currently working out proposals which will be circulated for public comment on how transfers between funds will be regulated. These provisions will give the Superintendent and the Commission the control over transfers between funds to make sure that where a transfer does take place, the rights and benefits of those persons affected by the transfer are retained.

The Pension Benefit Guaranty Fund: Sections 83 to 87. Gemma mentioned before the purpose of the fund. The change here is that the Guaranty Fund currently provides protection for plan members who are forty-five and ten. It is being changed to a phased-in approach with the magic number of 50, resulting in partial coverage up to full coverage at a magic number of 59, and the number is comprised of a combination of age and service.

Getting into the administrative details, Section 88 of Bill 170 I think is a very important administrative change which relates to the regulation of pension plans. Section

88 provides authority for the Superintendent to make orders related to a pension plan not only where something is happening that may contravene what is required by the Act or the Regulations, but also where there are allegations that the plan is not being administered in accordance with the terms of the actual pension plan itself.

Right now the legal authority of the Commission is limited to situations which are covered by legislation. There are a number of complaints that come in relating to the administration of a pension plan. This gives the Superintendent some authority to step in and investigate and make an order related to the administration of the pension plan and all orders or proposals for orders made by the Superintendent are subject to full-scale hearings before panels of the Pension Commission.

The hearing and appeal section is found in Sections 90 and 91. Where a person who is served with an order from the Superintendent on any of the issues that the Superintendent may make an order on, wants to appeal there will be a full-scale hearing in accordance with the Statutory Powers Procedure Act before the Commission.

The rest of the Bill is fairly general. It reflects what is currently in the legislation. Sections 107 to 109 set out powers of inspection -- powers of entry and inspection. They are fairly lengthy sections. Right now the Pension Benefits Act says that the Superintendent may inspect. Well, with the adoption of the Charter of Rights, the Ministry of the Attorney General embarked on a program to develop, to codify, the policy that should be adopted with respect to a regulatory power of entry and inspection.

The provisions here state under what circumstances an entry and inspection may be made. Those circumstances where a person who wants to make an inspection has to obtain an inspection order from a Justice of the Peace similar to a warrant, and I think it tries to achieve a balance between the need of the regulatory authority to know and the rights of the individual being regulated to his or her privacy.

Otherwise, I think that summary is the Bill. With respect to timing, I said there are a lot of revisions to January 1, 1987 or December 31, 1986.

The Pension Commission has issued a release which sets out how it would recommend the Bill be implemented; that is part of your package. There have already been regulations passed related to disclosure. As I said before, something will be coming on minimum interest and the surplus moratorium has been established by regulation.

That is it, and I would be pleased to try to answer any questions you might have.

Mr. Chairman: Thank you. Mr. McClellan?

Mr. McClellan: Thank you, Mr. Chairman. I actually have three or four questions to raise at this time. I will try not to take very much time. Firstly -- there seems to be an echo in here -- firstly, I think it was Mrs. Salamat who mentioned the amount of moneys in registered pension funds in Ontario at about \$60 billion?

Ms. Salamat: Yes.

Mr. McClellan: What is the amount of money in so-called surplus accounts in Ontario?

Ms. Salamat: We do not keep that statistic.

Mr. McClellan: I am sorry?

Ms. Salamat: At the present time, there is no record of surpluses in pension plans in Ontario.

Mr. McClellan: Are you not required to calculate the value of assets of each registered pension fund and record that value over and against the value of the liabilities of that pension fund?

Ms. Salamat: Okay. At each valuation, an actuarial report is filed and, yes, that report shows assets and liabilities. And if there is a surplus in the plan it will be shown on the balance sheet. However --

Mr. McClellan: So that information is in fact available and what you are saying is you are not prepared and have not been prepared over a long period of time to make that information public?

Mr. Kruger: The problem is, certainly the information is available; we would have to do it manually. One of the things that we are doing at this point in time is computerizing the Commission, and that type of information will be far more readily available when it is done. But instantly, now, the answer to your question is we are not trying to hide anything. It is just to perform that function. It is there and we would have to do it manually and do a search manually.

Mr. McClellan: You have been asked, Mr. Kruger, innumerable times over the last, I think three years -- certainly the last two years -- to provide that information and you have refused, the Commission has refused. I do not know how to interpret that.

Mr. Kruger: Well, sir, let me tell you, from my knowledge from the time that I have been in the Commission,

there was a request that came forward and it was asked: Of all of the plans, what was the surplus that the Commission did in fact give out or did approve? And we did provide that to the Legislature just, as a matter of fact --

Mr. McClellan: Yes; yes. But you have refused to provide the information about the amount that is sitting in so-called "surplus" accounts.

Mr. Kruger: With due respect, sir, I do not think it is any desire to withhold the information. It is just a matter of gathering it. You must understand that the Pension Commission has not been computerized. We do not have that; we would have had to do it manually. It did not have enough staff. We are in the process, with the support of the Minister and the government, of improving that. I think the explanation is as simple as that. There are no devils in this.

Mr. McClellan: Well, why can you not do it manually since it is such a crucial issue?

Mr. Kruger: It would take time. It would time take to do it. It is far more expedient to have the thing computerized so you can push it out at any point in time. It is an interesting piece of information; I share the need to know that and we are working towards that.

Mr. McClellan: And when will we have that information?

Mr. Kruger: When we get it computerized. We are just in the stage of just bringing in the equipment. The only other way we can get it is we would have to go and do a manual search. And even then, sometimes the information -- and this is another problem -- tends to be stale-dated because we are getting it off the actuarial -- Like, there is a triennial review, and we would be hoping to get to the point where we would know this on an annual basis.

Mr. McClellan: And there are how many plans, registered plans, that would have to be manually examined?

Ms. Salamat: Well, there are ten and-a-half thousand pension plans, some of which are money-purchase plans which will not really have a surplus position.

Mr. McClellan: Right. So we are talking about defined benefit plans.

Ms. Salamat: There are in excess of five thousand defined benefit plans.

Mr. McClellan: So somebody would have to read through the actuarial statements of five thousand documents and

obtain that information, and that is such an insuperable task that the Pension Commission has not been able to provide this information to members of the Legislative Assembly who have asked for this in aid of their responsibilities under this legislation?

Mr. Kruger: It is not a task if you have got the resources available to be able to do that in accordance with the other work. The resources have just not been there, sir.

Mr. McClellan: Mr. Chairman, I do not find this an acceptable situation. We are being asked to deal with the issue of inflation protection, the issue of the so-called "surplus" pension funds, actuarially surplus funds, in legislation that is before us. We are about to hold hearings and the Pension Commission once again is quite simply refusing to provide information about the amount of money in these funds. At some point the Committee, I think, is going to have to deal with this problem. I promised not to take very much time and I will just ask a number of other quick questions, if I may.

Mr. Cooper, you joined the -- What is your position with the Commission?

Mr. Cooper: I am right now seconded to the Commission.

Mr. McClellan: From? Where were you before?

Mr. Cooper: I was with the Ministry of Consumer Relations and I have provided advice to the Pension Commission.

Mr. McClellan: Since?

Mr. Cooper: '70s.

Mr. McClellan: Since the 1970s?

Mr. Cooper: Yes.

Mr. McClellan: And Mrs. Salamat, you became Superintendent when?

Ms. Salamat: 1983.

Mr. McClellan: I assume then both of you are familiar with the policy document of the previous government, "Ontario Proposals for Pension Reform"?

Ms. Salamat: Yes.

Mr. McClellan: Yes. Were you asked to participate in

the work in the development of the pension policy proposals of the previous government that are set out in the April, 1984, document, "Ontario Proposals for Pension Reform"?
Mrs. Salamat?

Ms. Salamat: I worked very closely with Treasury on that.

Mr. McClellan: And Mr. Cooper?

Mr. Cooper: I did not participate in the development of the policy but I was apprised of what was happening.

Mr. McClellan: I raise this because in your presentation, which I thought was a little bit political, you indicated that the legislation and the policy of the Ontario government was based almost of necessity on the majority consensus.

Mr. Cooper: I did not say "of necessity," sir. I said it was based on the majority consensus.

Mr. McClellan: Right. I just wanted to try to get an understanding of the policy of the previous government as set out in this document called for mandatory inflation protection; is that correct, Mrs. Salamat?

Ms. Salamat: Yes. And I did indicate that Ontario went in with stated positions and inflation protection was one of the positions it went in with.

Mr. McClellan: So that until the change of government, at least it was government policy in this province that it would be mandatory inflation protection for defined benefit plans?

Hon. Mr. Kwinter: If I could respond to that.

Mr. McClellan: I have not finished my --

Hon. Mr. Kwinter: When that paper was --

Mr. McLellan: You can respond when I ask you.

Hon. Mr. Kwinter: You are asking someone there what government policy is. I do not think they are in a position; I am in a position to tell you what government policy is.

Mr. McClellan: No, no, but you have not let me finish my sentence so you do not know what the question was. The question was, was it the policy of the previous government -- I do have a sentence if I can finish my sentence -- Was it the policy of the previous government, as set out, as I understand it, in this document and in the

policy statements of the previous Treasurer, Mr. Grossman, that there would be mandatory inflation protection of a partial nature for defined benefits plans?

Mr. Kruger: That was a White Paper. That was a proposal and I can bring you up to date. I have just come from a meeting of what is called CAPSA, the regulatory authorities across Canada, and I can tell you that is the one part, inflation protection, with the exception of Manitoba, and that they are pretty well unanimous against having it included within their plans. Manitoba is considering it.

Mr. McClellan: I understand that, but my question was, was it the policy of the Conservative government when Mr. Grossman was Treasurer and the Minister responsible for pension policy as at that time the Treasurer was, was it the policy of the Ontario government when Mr. Grossman was Treasurer that there would be partial mandatory inflation protection for defined contributions?

Mr. Cooper: I cannot answer what the policy of the previous government was, but I can tell you that that paper I believe was issued in April. And then later in December, I believe of 1985, the Treasurer indicated that --

Hon. Mr. Kwinter: December of '84.

Mr. Cooper: -- December of '84 the Treasurer indicated that a consensus had been reached and that Ontario would draft legislation according to the consensus items.

Mr. McClellan: He did not indicate -- as I have seen documents that suggest that he did indicate -- that he intended to proceed unilaterally?

Ms. Salamat: -- to pursue it.

Mr. McClellan: I am sorry, Mrs. Salamat? Mr. Minister, maybe you can take that.

Mr. McClellan: Well, I think Mrs. Salamat was about to say that the Treasurer indicated that he intended to pursue it.

Mrs. Salamat: No.

Mr. McClellan: That is what she said.

Hon. Mr. Kwinter: Are you looking for information or not? I will tell you what the situation was. I said it in the House and you should know it.

Mr. McClellan: I am asking about the policy of the previous government --

Hon. Mr. Kwinter: I am going to tell you about the policy of the previous government.

Mr. McClellan: -- when Mrs. Salamat was the Superintendent of Pensions.

Hon. Mr. Kwinter: How do I know? I can read. I know what went on.

Mr. McClellan: Those are the people involved.

Hon. Mr. Kwinter: We are talking about government policy and there is a political implication here and I think it is important that you know it. That in that paper, the Treasurer of the day, the Honourable Larry Grossman, stated that it was the policy of his government to bring forward mandatory inflation protection pegged to 60 per cent of the CPI.

That was his policy; he stated that was what he was going to do. Subsequent to that policy and subsequent to this government taking power, he backed off. And he said publicly that even though he wanted to do it, he had had representations from industry and other jurisdictions and because of that he was not going to proceed.

So it was not as if this government changed the policy. That government decided that even though they would like to have done it, they could not. They backed off and he publicly stated in January of '85 that his government would not be pursuing mandatory inflation protection.

Now, those are the facts and it has nothing to do with me or anything else. Those are the facts as to what had happened.

Mr. McClellan: Well, those are -- Perhaps at some point in the proceedings somebody from the Conservative side of the table can shed some further light on that because I --

Mr. Bernier: I do not think that has anything to do with the Bill that is before us today.

Mr. McClellan: Sure it does. We are talking about --

Mr. Bernier: It should be Bill 170.

Mr. McLellan: Yes. We are talking about mandatory inflation protection and whether it should be part of the Bill or not. It used to be the position of the Conservative Party that there should be inflation protection to a level of 60 per cent, and I am trying to understand what the status of that was from the officials who were advising the

government of the day.

Mr. Bernier: Well, you have a new government; you have a new Minister, new policies.

Mr. McClellan: Well, I assume your policies do not change; I am sure there is consistency there.

Mr. Kruger: If it will be of help, I can tell you that today there is absolutely no consensus across this country on this point in Ontario through the Minister's statement is the only jurisdiction that said we will have inflation protection in some form. In fact, if there was one thing where I was bitterly criticized as a representative of Ontario is for us to have the temerity to put forward such an item when it was absolutely opposed to the point I was dressed down by a member of the Legislature of Alberta. I was not quite called "stupid" but I was in no uncertain terms told that they will never have it.

Mr. McClellan: Which leads me to my next question which is also to Mr. Kruger. You have been quoted in I think in today's Globe and again on March 14th in the Toronto Star as indicating that you believe that -- I just wanted to find the quote in the Star -- that you believe that pension benefits are a form of deferred wages as a matter of principle.

I think you are quoted as saying the same thing in the Globe and I wanted to have a clarification either from yourself or from the Minister as to whether or not that is a statement of government policy and if we could have a clear statement with respect to that issue as to whether or not pensions represent deferred wages.

Hon. Mr. Kwinter: I am quite happy to tell you that. In my opinion, pensions do represent deferred compensation. Having said that, I think you should be aware that there is certainly a difference of opinion out in the real world. Some people think that it is fringe benefits and some people think it is deferred compensation. I think it is --

Mr. McClellan: You think it is deferred compensation?

Hon. Mr. Kwinter: I think it is deferred compensation.

Mr. Kruger: And further to that, that is exactly what I was trying to say in those quotes. There are two sides to the story and I was echoing within those quotes just exactly what the Minister has just stated.

Mr. McClellan: Just for the record, it was also the policy of the previous government as set out in the pension document of April, 1984, and I am quoting, "pensions are

deferred compensation."

I think that is helpful to have a clear statement of that principle because I think from that flow a number of logical consequences as we move through the detail of this particular Bill.

I have only one final question, Mr. Chairman. I was wondering if we could have a little bit more information about implementation dates. I know Mr. Cooper made reference to a summary document, but if you could tell me where some of the more important implementation dates will trigger in. I would assume that you will want to make many features of the Bill retroactive. I would hope you would make them retroactive.

Mr. Kruger: If I can be of some help, I think in your package is a statement that has gone out from the Pension Commission: "Retroactivity and the New Pension Benefits Act," which spells out in detail those things that would be -- I think it should be in your package.

Ms. Salamat: If it is not, I will get copies.

Mr. McClellan: It is not in mine.

Ms. Salamat: Is it there?

Mr. Kruger: It should be there, and that spells out the things that we have already made retroactive which is in accordance with the statement of the Minister in the House and we followed up immediately on that. And they are retroactive; those things that are indicated are retroactive as of January 1st, 1987. These are the ones that could be retroactive without the necessity of having to have the Act passed. That is what we looked at.

We do have a difficulty with regard to the Act. Once it is passed, there are administrative problems regarding when the effective proclamation date should be there, and I think there is a consensus within the industry that they would prefer a proclamation date of the 1st of January, 1988, to give them time because there are a lot of regulations that are now coming forward. We are working on those regulations. We are working on the investment regs as well to make them consistent with the Act. That is the consensus that is in the -- I imagine it will be up to the Legislature to decide what that date is.

Mr. McClellan: What about Section 75 which impacts on the Goodyear workers? Is there a retroactive provision contemplated for that Section?

Mr. Kruger: No; no.

Mr. McClellan: Not at this time?

Mr. Cooper: It is not in the Bill.

Mr. Kruger: No. We would need the power of the Bill to get --

Mr. McClellan: Yes. Thank you, Mr. Chairman.

Mr. Chairman: Mr. Lane?

Mr. Lane: Thank you, Mr. Chairman. To follow Mr. Cooper through the presentation, there were just two or three things that I was not quite clear on and I am sure there will be many more as we go along.

On the first page under Registration and Administration, you are talking about administration cost and surplus treatment. What did you mean by "surplus treatment"?

Mr. Cooper: It would be entitlement or whether or not a sponsor could request reversion of surplus in an on-going plan, treatment of surplus, what happens to the surplus on plan wind-up, and it would also apply to the utilization of the so-called "contribution holidays" by planned sponsors, the utilization of plan sponsors to use surplus to offset other costs that may be required either by the employer or by the employee.

Mr. Lane: I guess I am confused as to what surplus is.

Mr. Cooper: I am sorry. The surplus is where the assets of the plan exceed the liabilities of the plan.

Mr. Lane: Okay. On page 3, Contributions, you talk about the authority to prescribe minimum interest rates to be applied to contributions. Now, will the minimum rate always apply or will there be a fluctuating rate of interest at the time it was offered?

Mr. Cooper: There will be a minimum rate established although it may not necessarily be a fixed rate. I believe the draft regulations set out either a proposed fixed rate for a specific year or in certain types of plans there may be a fund rate. But it is a minimum rate and plans certainly can provide more than the minimum. The purpose is to ensure that member contributions receive an increase that reflects market or experience.

Mr. Kruger: It is the intent of the Commission to review it annually.

Mr. Lane: So the minimum changes from year to year or

could change from year to year?

Mr. Cooper: Absolutely.

Mr. Lane: It still could fluctuate in any given year?

Mr. Cooper: Absolutely. That is the intention.

Mr. Lane: Thank you. Getting back to Mrs. Salamat, in the statistics you were giving us I was a little bit slow there. You mentioned that Ontario was the first in Canada to have a Pension Commission, 196- ..?

Ms. Salamat: -- 65.

Mr. Lane: -- 65. And I think you mentioned the total volume of money was about \$160 billion?

Ms. Salamat: Yes. There is 60 billion in Ontario plans assets.

Mr. Lane: 60 billion.

Ms. Salamat: 60 billion. In Canada, it is about 175 billion and that includes amounts in government consolidated funds for its public servants.

Mr. Lane: And did you mention how many people or how many pensions are involved? Did you give us that statistic?

Ms. Salamat: Ten and-a-half thousand pension plans and approximately two million Ontario workers.

Mr. Kruger: And that is approximately 70 per cent -- some 70 per cent of the pension plans in Canada.

Mr. Lane: Thank you very much. Thank you, Mr. Chairman.

Mr. Chairman: Mr. Bernier?

Mr. Bernier: Thank you, Mr. Chairman. Mr. Chairman, through you to the Minister, may I express my thanks to the members of the staff in the Commission for going through the Bill so carefully and, I think, enlightening all of us as to the changes and reforms that you are proposing.

I have to admit to you, going through the Bill, I was somewhat concerned about the cost of the administration. I wonder if you would just give me a full picture of the Commission. What is the size of the Commission now? What is your administration budget? How many employees do you have? What do you see happening after this Bill is in place? What will it swell to? because I see police officers and inspectors running around the province, and I

am just concerned.

Mr. Kruger: The mandate that I have is to get in and to do some reorganization there so that the Commission will be in a position to administer properly this Act.

We presently have permanent staff, some 66 permanent staff. We have some contract staff of about 25. We are, as I said before, on the computerization. The Commission is bringing in word processors; it is bringing in computers and things of that type.

Our budget will increase to a maximum of \$5 million for the administration of it, and this will cover all aspects. It may be of interest to the members of this committee to know that the Pension Commission never had its own actuary, that we never had our own lawyer. We are going to get those people.

Under the Act there is a provision that there be a plan auditor so that we will not be subject to the same thing that the federal government was with Mr. Dye, who brought in that the plans were not being looked at. So we are bringing in a plan auditor.

We are certainly bringing in an investment analyst. We will have research staff because this Pension Commission has got to start to live in the future. We have very concerned about demographics; we are concerned also about a lot of things.

When these regulations come in, some of our concerns are the actuarial standings, for example. You have only got to shave the standards by half a percentage point on your estimate of what the yield will be, and that could be the difference between a surplus and a deficit. So we will be monitoring these plans much more closely than in the past.

Mrs. Salamat is now the Director of Pension Plans. As has been stated by Mr. Cooper, he is on loan; we are going to get our own solicitor. We have got to be concerned not only in these regulations. We have got to be concerned of corporate manoeuvres as well. So we are going to be monitoring quite a few things which heretofore probably were not as necessary because they did not have the same visibility nor the same concern. There is a public consciousness about these plans.

We have also brought in another group that we are just hiring in that do indeed know about computers. This is the type of situation that lends itself to computerization where the day is going to come where instead of exchanging documents we will exchange computer tapes with actuarial firms.

So we are modernizing, becoming very aggressive, and we have got to be in order to administer this in accordance with the responsibilities under the Act. And we have had excellent support from the government and particularly from the Minister in this regard.

Mr. Bernier: You have a staff of 66?

Mr. Kruger: That is right. Permanent.

Mr. Bernier: Do see that doubling in the next two or three years?

Mr. Kruger: No; no. Our hope is that with computerization and with the other administrative changes that we are bringing into the Commission, I would hope that we would not -- well, our present thinking is that the maximum that I could see is perhaps 90 staff. I doubt that we will get to that number, but we are being very cautious in keeping with the need to be concerned about money and the staff that I mentioned who are contract will be analyzing how many of them should be turned into permanent. I do not expect they will though.

Mr. Bernier: The \$5 million annual administration budget, that is totally borne by the consolidated revenue fund? There is no charge to the --

Mr. Kruger: There is a fee that has got to be paid by each plan that is registered, and we are reviewing those fees annually. I think it is totally unrealistic to expect that the amount of revenue to be gained from the registration fees should cover the entire cost of the Commission. You cannot run a commission of this type which also has a social purpose on a zero-based budget. You just cannot do that.

Our percentage is now around 45 per cent -- something like that -- of our costs are covered, but that has got to be a secondary consideration because more importantly are the needs that the Commission has to administer this Act. But we are there; we are constantly reviewing that as well. So wherever we can get revenue from, sir, I can assure you we go after it.

Mr. Bernier: Thank you, Mr. Chairman.

Mr. Chairman: Mr. Lupusella?

Mr. Lupusella: Thank you, Mr. Chairman. First of all I would like to compliment the Minister for the introduction of Bill 170. I think that this Bill will be of great value in covering benefits for a lot of people across the province of Ontario.

And for the Commission I have a simple question. Reading the compendium material of the Pension Commission of Ontario, page 19 -- No. Page 22; I am sorry -- and it is Section 19, subsection (v) or 5. You are talking about a lump sum payment in relation to a person that would like to retire before or earlier than the ten-years prior to obtaining the normal retirement. And, of course, if the person or the application for such request will take place before, he can request a lump sum; am I correct?

Mr. Cooper: I am sorry, Mr. Lupusella; I am not sure --

Mr. Lupusella: Page 22.

Mr. Cooper: Is it of the Bill?

Mr. Lupusella: No. No. Not of the Bill.

Mr. Cooper: Which?

Mr. Kruger: It is the Regulations, I think.

Mr. Cooper: Is that a compendium?

Mr. Lupusella: The draft Bill.

Mr. Cooper: The draft regulations?

Mr. Lupusella: Yes; the draft regulations.

Mr. Cooper: Okay. This is --

Mr. Lupusella: Yes; that is the one. And it is page 22.

Mr. Cooper: Okay. The lump sum payment where a person who would otherwise be locked in has a mental or physical disability that could shorten life expectancy.

Mr. Lupusella: Exactly.

Mr. Cooper: Yes. The purpose of that Section 19 of the consultation draft of proposed regulations establishes certain minimum features for the transfer vehicle where money has been transferred from a pension plan fund to a type of RRSP arrangement, and it, of course, would be ordinarily locked in and must be utilized only for income in retirement. However, this provision states that the contract may provide that if a person who would ordinarily be entitled to the benefit has a mental or physical disability that could shorten life expectancy, the locking-in feature would no longer apply and he would get the lump sum.

Mr. Lupusella: And that is where the question will arise that he can apply ten years prior to obtaining the normal retirement date and that the lump sum is going to be based on a particular formula which is promulgated by the Canadian Institute of Actuaries.

Now, I have two questions that I would like to ask. How much the individual is going to lose as a result of the application of this particular clause. And the other question is, why the ten-years factor is applied, and, for example, it cannot be shortened less than ten years, for example, nine years, eight years. What is the basis for choosing the ten-years period rather than nine or eight years?

Mr. Cooper: Sir, I will answer the last question. I will leave Mrs. Salamat to talk about the actuarial question. But the basis for the ten-year period it means that where moneys have been transferred from a pension plan to this RRSP-type vehicle, that benefits cannot commence to be paid as a pension earlier than ten years prior to the normal retirement date under the plan.

This is in keeping with the philosophy in Section 42 of the Bill which says that if you are employed you can terminate employment and receive a pension at any time within ten years of your normal retirement date of the plan. We are taking that feature from Section 42 and applying it to the transfer vehicle. It says no earlier than ten years. So it could be at any time within that ten-year period. If the normal retirement date was 65, the person could receive payments any time from 55 onwards.

Mr. Lupusella: Can I have a short supplementary on that? What about if the tenure of the employment is not ten years but is nine years? Is that person excluded from applying to receive --

Mr. Cooper: No. It does not relate to tenure of employment. It relates solely to age.

Mr. Lupusella: Age.

Mr. Cooper: Right.

Mr. Lupusella: And in relation to the second question which is when the lump sum formula is applied, how much the individual is going to lose because of this particular clause which is giving him the opportunity to apply for that lump sum ten years prior to the regular age of retirement?

Ms. Salamat: There is no loss to the member. What it is is that at termination of employment, a member is able to transfer the value of the pension benefit to this arrangement. The value of that pension benefit is

accumulated over time with interest and whatever that account is worth -- if I can call it an "account" -- at the time the member chooses to retire, that account value is then used to provide the individual with a life income. So it is whatever market rates are available at that point in time and there is no loss to the individual.

Mr. Lupusella: I am very pleased to hear and this is the main reason why I was questioning the content of this particular section.

And also, if I heard Mr. Cooper correctly, there is a surplus of funds in the range of \$60 billion -- am I correct or wrong? -- the total amount of money invested on the plans which will include the 10,000 plans which are presently existing in Ontario.

Mr. Kruger: The value of those assets is \$60 billion.

Mr. Lupusella: \$60 billion.

Mr. Kruger: That is right. Yes.

Mr. Lupusella: Now, when you are going to computerize the system -- and of course I will not accuse you that you do not want to provide information to this committee because I think it is irresponsible -- you are dealing with 10,000 plans and you do not have any particular computer. I am sure that the Minister heard your statement and that we are going to accelerate the computerizing process immediately.

Mr. Kruger: Right.

Mr. Lupusella: But when you have the information would you please tell me or any member of this committee how much of this money on the \$60 billion are directly involved with the private sector and the rest with the public sector. Would you please give us this information sometime in the future or if you have this information, maybe you will be able to give it to me.

Ms. Salamat: We are trying to collect this information. A very rough estimate is that with the private sector excluding those public sector groups in the Consolidated Revenue Fund, it is approximately \$45 to \$50 billion with the rest of the money being in Consolidated Revenue Fund for the public sector employees. But this is a very very rough estimate.

Mr. Kruger: Yes. We will be able to identify when we get computerized what is in the Consolidated Revenue Fund and I would not be at all surprised to see a much higher figure.

Mr. Lupusella: Thank you very much.

Mr. Chairman: Mr. McClellan?

Mr. McClellan: I was just curious, how do you arrive at the total value of the assets of pension funds? What is your methodology?

Ms. Salamat: Okay. To a large extent we use Stats Canada to assist us with that and do some simulations with that amount because Stats Canada -- Obviously, what you have is a pension plan in Ontario covering employees all across the country. We try in some manner to capture the amounts that we think could be attributable to Ontario employees.

Mr. McClellan: And what is the data that you use? The data in each plan?

Ms. Salamat: The data that is fed into the Stats Canada system is about a year behind.

Mr. McClellan: You feed in the data that from each plan?

Ms. Salamat: Yes; that is data from each plan collected by Stats Canada not only from the pension jurisdictions but from Revenue Canada and the federal taxation.

Mr. McClellan: Who does the manual tabulating then? Do you do it or does Stats Canada do it now? You do it in the first instance, do you not?

Ms. Salamat: Yes. We provide the information to Stats Canada.

Mr. McClellan: So you go through each plan -- You do go through each plan manually?

Ms. Salamat: Actuarial information is not provided to Stats Canada.

Mr. McClellan: No, but you do exactly the procedure that you just told me half an hour ago you could not possibly do with respect to arriving at the value of the surplus funds, unless I am misunderstanding something.

Ms. Salamat: No. The data that is fed into the Stats Canada is on a plan basis. It is information relating to the plan structure, the type of funding arrangement -- be it trustee or insurance company funds.

Stats Canada gets information from the taxation groups. We do not provide asset figures to Stats Canada. They pick that up from the federal base and give it to us on a total, and it is that data that we massage to get some

figures.

Mr. McClellan: I see. I think the Supreme Court was right in its description of your operation.

Mr. Kruger: Well, there is a -- I have to comment to that.

Mr. McClellan: One of the things the Supreme Court accused you of was stonewalling, as I recall.

Mr. Kruger: With due respect, sir, we are not stonewalling. There was an example of an administrative thing which we just described in Stats Canada. Eventually we are going to down-load the Stats Canada onto our own computer and we will have total information on each plan.

Mr. McClellan: After we have finished dealing with the issues that we are responsible as legislators for dealing with, then the Commission may release the information which should be the basis of an informed decision. That is what the Commission is telling us here as we start these proceedings and as we try to decide what to do about the very difficult issue of surplus accounts and inflation protection and the relationship between surplus moneys and inflation indexation. The Commission says they simply will not provide us with the information about the amount of money in so-called "surplus" accounts. I find that intolerable, Mr. Minister.

Hon. Mr. Kwinter: With due respect, may I suggest that we have a question of public policy and principle about how you handle surpluses, and without surpluses you do not have the problem of mandatory -- Or without mandatory inflation protection or with it you will not have the problem of surplus.

So although it would be of interest -- and I agree it would be of interest -- to know the quantum; it has nothing to do with the decision. It has to do with the basic policy decision, the basic principle, of what happens to surplus and who does it belong to. And it does not matter whether it is \$50 billion or \$1 billion.

So what I am saying to you is that I agree it would be interesting, but it is certainly not the basis of the decision. Are you suggesting that if there is 'x' plus something, you will deal with it? If it is 'x' minus something you will not?

Mr. McClellan: I am predicting that over the course of the next two weeks and beyond we are going to be hearing from a number of industry representatives -- General Motors has already been quoted in the Star -- saying that inflation indexation would bankrupt the economy, increase the price of

the family car, put grandma in the poor house, and probably cause earth quakes and volcanoes.

And yet there are estimates that there are huge amounts of money in so-called "surplus" accounts which are being used both to off-set annual service contributions in the case of Ontario Hydro, for example, which I think has a surplus of over \$300 million. That is just one plan. And secondly, in the Conrad Black case is going directly into the pockets of employers.

I think it is important data because you are going to be hearing the economic argument for the next two weeks that nobody can afford inflation protection and yet I think we are entitled to know what is happening with so-called "excess interest" and what those accounts look like.

Hon. Mr. Kwinter: Yes, but the point that I am making is this. If General Motors came to you and said, with respect, that by pegging pension benefits to the cost of living, and it was going to cost 'x' per cent per year on their earnings, and they said that to do what you are suggesting, as they have said, is going to cost them somewhere in the neighbourhood of three hundred and some-odd million dollars, it does not make much difference what the total sums of moneys in all the pension plans in Ontario is as to whether you deal with that decision, because there are some plans in Ontario that have no surplus; there are some plans in Ontario that have a deficit.

Mr. McClellan: How do you know?

Hon. Mr. Kwinter: What do you mean, "How do I know"? I know. We deal with them on a daily basis.

Mr. McLellan: And you will not give us the data.

Hon. Mr. Kwinter: The point that I am making, it does not make any difference as long as you understand that I can assure you there are plans in deficit; there are plans in surplus. And what we are talking about is the basic principle; it does not matter what the quantum is other than from an interest point of view. And I agree; it would be interesting to know but all it would tell you is that in those plans somewhere there is this total. But you cannot deal with a specific plan with that information because you have to go to that specific plan. We have one plan -- What is the status of Fittings? Are they gone?

Mr. Kruger: They are gone.

Hon. Mr. Kwinter: They are gone.

Mr. Kruger: We took care of them through the Guaranty Fund.

Hon. Mr. Kwinter: Okay. Well, we had a company, Fittings, that had serious problems. They have now gone; they are finished. There are lots of plans out there that are like that. We know that. We deal with them on a daily basis. We have plans that are in deficit, plans that are in surplus and plans that maintain an even balance.

Mr. McClellan: That is all very reassuring but we are being asked to deal with this legislation and --

Hon. Mr. Kwinter: There is no reason why you cannot. You are dealing with the principle of if there is a surplus what do you do with it? There is no reason why you cannot deal with it.

Mr. McLellan: I am sure you understand the point that I am trying to make, Mr. McCague, but I do not seem to be getting anywhere with the Minister.

Mr. Chairman: I think I have seized upon what it is you want. Mr. Bernier?

Mr. Bernier: Thank you, Mr. Chairman. Excuse my ignorance but I have to admit I am not very knowledgeable about how the pension funds work and how they grow with interest and everything else. The question I guess that sticks in my mind, if you could take me through step by step, the contribution comes into from the employee to a plan. It is reinvested by regulation and it must garner so much interest. What happens to the interest? Does that swell the plan?

Ms. Salamat: It becomes part of the corpus of the plan. It is invested. If it is invested in stocks or bonds, then the earnings on the investment becomes part of that fund.

Mr. Bernier: The overall fund, that is right. How does that find its way back into to the principal employee? The term is adjusted by the negotiations each year, or how is it --

Ms. Salamat: There are certain plans that are negotiated, and, of course, the benefit level would then be determined by the collective bargaining process. In other plans the employer decides what benefit level it will provide. Then an actuary costs that benefit. Whatever the cost is would be contributed by the employer and if the employees are required to contribute part of that cost, then those funds are then put into the pension plan fund or the trust fund and it becomes all part and parcel of the same fund. And periodically over time that fund is valued, that is the actuary evaluation based on the group.

The company at that time says, "Well, is there a deficit? Do we have to put in more funds? Or are we just breaking even? Could we at this point in time decide to increase the benefits promised?" That is it. Then the contributions again flow into the plan and you take this over a period of time.

Mr. Kruger: And of course that is how surplus can arise, and also deficits, and while there is a concentration on surplus, if one -- and I speak now as an economist -- if you were going to look at the impact, I think you would also have to look at how many plans are in a deficit position --

Mr. McClellan: We would love to.

Mr. Kruger: -- of unfunded liability as well. We would like to be able to give it just like that and we will be able to do that, sir, eventually.

Ms. Salamat: Maybe I could just add to this. We have a Pension Benefits Guaranty Fund in Ontario. We assess those pension plans that are in an unfunded liability position. And last year, just to give you an example, 1200 companies or more were required to pay an assessment. And that means that there are 1200 or more companies in Ontario with unfunded liabilities that has absolutely no surplus in that pension plan fund.

Mr. Bernier: In calculating the pay-out and the long-term actuarial benefits, is the interest rate calculated as part of that whole package?

Ms. Salamat: Yes. The actuary makes a projection as to the future earnings of that plan and determines a cash flow or cash requirement.

Mr. Kruger: And the actuary has also got to be concerned about the industry, what is likely to be the increases in salaries over a period of time. There are a lot of assumptions that the actuary builds into it that we have to monitor.

Mr. Bernier: So increases in pension is quite probable in a lot of the pension plans?

Ms. Salamat: In a lot of pension plans.

Mr. Bernier: Because of the interest?

Mr. Kruger: Yes.

Mr. Bernier: Thank you.

Mr. Chairman: Mr. Guindon?

Mr. Guindon: Thank you, Mr. Chairman. Who administers the \$60 billion?

Ms. Salamat: In part by trust companies; in part by insurance companies.

Mr. Guindon: And does the ultimate responsibility lie with your department?

Ms. Salamat: No; no. We just regulate the type of investments a pension plan sponsor may make but we do not hold the funds.

Mr. Kruger: We are like a monitoring agency that monitors what is going on in the plan at any point in time. But there are very strong fiduciary responsibilities by trust companies, by the insurance companies whether or not it is a totally insured plan and so forth so that they have their responsibilities under various other Acts. But we monitor, we oversee, to make sure that the thing is done in accordance with the dictates within the plan itself.

Mr. Cooper: Sir, when a pension fund is registered, it is not only registered with the Pension Commission of Ontario, it is also registered with Revenue Canada if the sponsor wants income tax relief. And the rules for registration under Revenue Canada as well as our own rules require that pension funds be held in trust to serve the purposes of the plan and there are requirements on who may hold that pension fund. So each pension fund is separate for the purposes of a specific plan.

Mr. Guindon: But the Ontario government or your department guarantees the pension plans in case something falters?

Ms. Salamat: Not all pension plans. Certain pension plans are those pension plans of a defined benefit nature; that is, I have promised you a hundred dollars a month as long as you live. Those types of pension plans are guaranteed by the Pension Benefits Guaranty Fund. Should that pension plan be wound up due to bankruptcy, then the Guaranty Fund kicks in any shortfalls.

Mr. Kruger: This is not an unlimited fund and we get the money by an assessment of those plans that are in an unfunded liability state. So the fund now presently sits at perhaps \$7 million.

Mr. Guindon: How much?

Mr. Kruger: About 7 million. So it is not an unlimited --

Hon. Mr. Kwinter: And it represents approximately 10

per cent of the plans.

Mr. Kruger: Yes. And it is not an unlimited amount of money out there. If a major corporation such as General Motors suddenly went bankrupt -- I do not think they will, but if they did, then there is a very particular problem. So you must remember that it is something that we have set up within Ontario -- one of the few jurisdictions in the world that have it and it is a very progressive step -- but it is not an unlimited well.

Mr. Guindon: Thank you Mr. Chairman.

Mr. Chairman: Mr. McLellan?

Mr. McClellan: Thank you, Mr. Chairman. In response to Mr. Bernier, I thinks Mrs. Salamat indicated there were 1200 plans last year with an unfunded liability. I assume that is 1200 out of the 5,000 or so defined --

Ms. Salamat: -- defined benefit plans.

Mr. McLellan: So if you know how many defined benefit plans have a unfunded liability, which is 1200 and I assume you could produce a list of those, why can you not tell us -- and I assume you know the amount of the unfunded liabilities. Since it is a regulatory agency, you are required to make sure they are actuarily sound -- why is it again that you cannot tell us how many of the 5,000 defined benefit plans have a surplus and what the total of that surplus is.

Ms. Salamat: Again, it is the resources required. There is a Pension Benefits Guaranty Fund. We are required to assess those pension plan sponsors where there are unfunded liabilities as a result of that data base of those plans for that specific purpose.

Mr. McClellan: I am still missing something.

Mr. Chairman: Is that strike three?

Mr. McClellan: I think it is strike five, actually.

Do you know how many -- Well, again, I simply quote from the Supreme Court -- "stonewalling," "blissful ignorance," "misleading," "undoubtedly negligent." These are descriptions from the Supreme Court of our regulatory agency.

Do we have any data as to how many plan sponsors charge annual service in the past year or whenever date it is available? How many plan sponsors have charged annual service contributions against surplus accounts? Do you know?

Mr. Kruger: That is not collected. We would have to look into each plan for that.

Mr. McLellan: You have no idea how many companies are doing what, for example, Ontario Hydro attempted to do, which is to write off their annual service contribution against their surplus contribution?

Mr. Kruger: On contributions holidays, no. That is a source of funding -- we would have to look through each of the plans for that. Look. It would come before the Commission if there was a particular problem on any particular case --

Mr. McClellan: Why do you not have that information?

Mr. Kruger: In the case of Ontario Hydro, we spoke with Ontario Hydro both with the union and with Hydro but then the matter went to court and it was resolved in the courts.

Mr. McClellan: Another group of workers having to go to court to protect their own money. You keep no records of --

Mr. Kruger: -- of the contribution holidays?

Mr. McClellan: -- of the so-called "contribution holidays"?

Mr. Kruger: No. We would have to look through the files.

Mr. McClellan: There is nothing in the legislation to deal with what you call "service holidays," which is writing off the annual pension contribution of the employer against money in surplus accounts? You have no idea how frequent this is? How much money is involved? Nobody even has to ask your permission to do this?

Ms. Salamat: We can get the information. It is just, again, we have not in the past collected this information. It means a manual search of all the plans.

Mr. Kruger: This is another example of the highlighting of why we have got to computerize, and we intend to computerize. We intend to push that data out so that we have got it. We need it to manage.

Mr. McClellan: Yes, you do, but you have needed it for a long long time to manage. And I do not understand why so many years after -- we are now into years -- that this has been an issue and there is nothing in the legislation at all, as far as I understand, Minister, that deals with the

so-called "service contribution holiday." That is a felicitous phrase.

Hon. Mr. Kwinter: We have a provision in the Regulations.

Mr. Cooper: Yes, there is a provision in the Regulations and how the use of actuarial gains are to be applied first of all for past-service costs and subsequently for current-service costs.

Mr. McClellan: Could we have a copy?

Mr. Cooper: It is in your folder. I think it is called Consultation Draft Regulations. They were publicly circulated in February for comment.

Ms. Salamat: That is the new proposal. In the existing legislation, I think --

Mr. McClellan: These are the new regulations. There is nothing in there now.

Ms. Salamat: There is a provision in the existing Regulations, and I think it is 212. Jerry?

Mr. Cooper: There is something in the Regulation now to sub 15 that says where there is a gain under the plan that gain may be applied.

Mr. McClellan: Thank you. I will review that. I just received this document this morning. It was not sent to me in February.

Mr. Cooper: I do not know the circulation list. They were probably to everyone on the PCO circulation list. There was 5,000 or something? Anyway, it has been circulated since February.

Mr. McLellan: Anyway, you would not want that sent to the wrong people, would you.

Mr. Chairman: Any further questions, Mr. McLellan?

Mr. McClellan: Well, I guess we will just keep coming back to this over and over and over again. But no.

Mr. Chairman: I expect to hear from you again, yes.

We will adjourn now until 2 o'clock.

The committee adjourned at 11:53 a.m.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

PENSION BENEFITS ACT

TUESDAY, APRIL 7, 1987

Afternoon Sitting

STANDING COMMITTEE ON GENERAL GOVERNMENT

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Bernier, L. (Kenora PC) for Mr. Sheppard

Hennessy, M. (Fort William PC) for Mr. Pollock

Smith, D. W. (Lambton L) for Mr. Fontaine

Clerk: Deller, D.

Witnesses:

From the Ontario Federation of Labour:

Wilson, G. F., President

Pattinson, G., Vice-President-Elect

Lee, D., Pension Consultant

From the Ministry of Financial Institutions:

Kwinter, Hon. M., Minister of Consumer and Commercial Relations and Minister
of Financial Institutions (Wilson Heights L)

From the United Rubber, Cork, Linoleum and Plastic Workers of America, Local
232:

Birrell, D., President

From the Pension Commission of Ontario:

Cooper, J., Legal Counsel

Kruger, J., Chairman

From D. S. Rudd Associates Ltd.:

Rudd, D. S., President; Former Member, Pension Commission of Ontario

From United Senior Citizens of Ontario Inc.:

King, J., President

Hanmer, B., Executive Member

Individual Presentation:

Hudyma, L.

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday, April 7, 1987

The Committee met at 2:02 p.m. in room 228.

CONSIDERATION OF BILL 170, AN ACT TO REVISE
THE PENSION BENEFITS ACT
(continued)

Mr. Chairman: Okay. The first presentation this afternoon is from the Ontario Federation of Labour and we are ready for you.

Mr. Wilson: Thank you, Mr. Chairperson, Mr. Minister. I have in the seats with me this afternoon Mr. Glen Pattinson who is a Vice-President of Communication Workers and Mr. Don Lee who is a pension consultant.

We have before you two documents. Firstly, let me thank you for the opportunity to appear before the committee this afternoon. Secondly, as I say, we have two documents before you. The darker blue cover is a rather detailed submission that we have put together for presentation to this committee and it also contains an appendix at the end which has additional information. But let me just quickly say that the main body of the brief, which is that document, covers the questions of indexing and surplus withdrawals, participation, union representation, vesting, portability and a list of other concerns that we have on page 30 of that.

In order to expedite our time here this afternoon, we have summarized our presentation. Before doing that, however, I would like to alert the committee that there are a number of persons in this room with a vested interest in this matter, and I would like to quickly indicate who they are.

From the Canadian Council of Retirees we have Bill Corn and Ernie Arnold. We also have representing Local 1000 CUPE, Jack MacDonald. From the Ontario Public Service Employees' Union we have the Second Vice-President, Ron Martin and Shirley McVittie, the Benefits Director. We also have with us the Legislative Director of the Ontario Federation of Labour, John O'Grady, and we have Mr. Len Bruder, the Director of the United Rubber Workers and he is accompanied today by a member of Local 232, who is the President of that Local -- I am sure all of you are familiar with that situation -- Dave Birrell.

Let me summarize, if I can, from the second document which is the light blue cover.

The Ontario Federation of Labour, on behalf of more than 800,000 members and its affiliated organizations appreciates this opportunity to present the concerns of union and pension plan members about the Ontario Pension Benefits Act. The OFL has been an active participant in Canada's latest chapter of pension reform and is impatient to see some results.

Ontario's Royal Commission on Pensions was initiated almost ten years ago. The hesitation which has characterized the discussion of reform has unfortunately been reflected in the substance of Bill 170. The government of the day apparently does not have the will to create a system of private pensions in which participants could have full confidence.

Our inventory of issues on which Bill 170 falls short is itself too long. No commitment to indexing, surplus withdrawals continue, the powers and composition of the Pension Commission, the complexity of vesting rules, the failure to recognize fully the role of unions in pension administration, and the lack of any serious commitment to employee control of pension funds.

We feel obliged to begin by recalling the basic objectives of an effective pension program for working people. Benefits are earned from an early age and are not interrupted by changing or losing jobs, by family responsibilities or by education and training. Benefits move ahead with wage increases before retirement and with price increases after retirement. Benefits are equal for men and women. The overall level of benefits enables working people to maintain their living standards in retirement.

In the labour movement we continue to believe that these objectives are most easily and effectively accomplished within the framework of the Canada Pension and Old Age Security programs. These programs meet all of our criteria except the last. The benefit levels need to be improved.

The public's angry response to employers withdrawing so-called "surpluses" from employees' pension funds is not difficult to understand especially when the money is used to finance plant shutdowns and corporate acquisitions. The employers' behaviour confirms the deep-seated suspicion amongst working people of any arrangement which requires them to place some part of their earnings under the exclusive control of an employer. The fear that interest on employees' money is being used to pay for all the benefits and further to service the interests of the employer can hardly be described as irrational in the circumstances.

Plan members need a firm commitment to index private pensions and an unqualified prohibition of employer withdrawals both in ongoing and terminating plans. The use of surplus to reduce ongoing contributions should be prohibited until full provision has been made to protect the value of benefits against inflation. Whatever goes into the pot must be for the exclusive benefit of the plan members and their beneficiaries. Otherwise there can be no basis of trust -- no confidence amongst participating employees that their interests are being respected.

Bill 170 also needs to show more respect for the role of collective bargaining in the development of the private pension system. Every union negotiating committee that ever raised the issue of pensions can tell you that any pension improvements they achieved were at the expense of other forms of compensation and, in particular, our wages.

For our members, deferred wages is not just a nice philosophical concept. Those who defend the employer's right to withdraw so-called "surplus" funds argue that employers must guarantee the benefits through the bad times, that the right to withdraw is only the other side of the coin. Employees have no right to a share of the assets unless they are prepared to take the risk.

The implicit proposition that employees are not exposed to any risk under the current system is preposterous. The risk that the value of benefits will decline as a result of inflation is not just theoretical; it is the actual record of the past twenty years of history.

The risks involved in pension finance are not balanced. The risk of higher-than-expected costs is deliberately kept to a minimum, and the probability of a lower-than-expected cost is maximized. Over time, the employee is expected to come out ahead of the game and this is, indeed, what has happened.

In the early '60s before inflation began to build, actuaries expected invested pension contributions to grow with interest of 3 or 4 per cent, and the employer's contributions were determined on that basis. When actual interest rates exceeded these assumptions, a surplus was generated. When higher rates recurred year after year, the actuaries increased their assumptions to 5 per cent or 6 per cent reducing the employer's pension contribution before the surplus was generated rather than after. Today it is common to see interest rate assumptions of 7 per cent and 8 per cent and still enormous surpluses are being generated.

When we examine actual experience rather than theoretical notions about the risks of pension finance, it is clear that participating employees have typically been exposed to much more adverse experience than employers. In

fact, conventional wisdom tells us that higher interest rates are both the natural consequence of and the cure for inflation. The unexpected bad experience of employees goes hand in hand with the unexpected good experience of employers.

A significant part of the surplus arises directly out of the declining value of pension benefits presently being paid to retired people. For these reasons we were encouraged when the government linked the announcement of a task force on indexing with a moratorium on surplus withdrawals. This link should be carried forward into Bill 170.

The Pensions Bill presently before the Legislature should be amended to include a new clause establishing that private pensions will be fully indexed from January 1, 1987. The provision should apply to all private pensions throughout retirement and should further apply to all deferred vested benefits so that portability arrangements could become meaningful.

The Bill should also require upgrading the benefits of those presently retired and restore the purchasing power they have lost during their retirement. The task force established by the government could then concern itself with how best to implement a system of private pensions which delivers real money instead of false promises and advise the government on what regulations will be required.

The present Bill does nothing more than establish the rules under which employers can withdraw surplus money. A commitment to indexing coupled with an unqualified ban on surplus reverting to the employer would establish a system of private pensions which deserves the confidence of those who participate even if it does not meet the pension needs of most Canadians.

These central recommendations on indexing and surplus are outlined together with our other major concerns in the summary which follows. We have also attached the main body of the brief, a clause-by-clause outline of technical problems and other issues. Let me read the summary of recommendations.

1. Withdrawal of so-called "surpluses" shall be prohibited without qualification for ongoing plans and when a plan is being terminated. The use of surplus to reduce ongoing contributions to a pension plan shall be prohibited until full provision has been made to protect the value of benefits against inflation.

2. All future pension benefit payments and deferred vested entitlements shall be fully indexed to the cost of living from January 1 of 1987. Effective January 1, '87,

all current pension payments shall be increased to the amount obtained by adding the first percent increase to the consumer price index since the person's retirement date to the original mount of pension at retirement date.

3. The Pension Commission shall be composed of a neutral chairperson and vice-chairpersons and equal numbers of representatives of both employer and employee groups. When the Commission sits in three-member panels, those panels should consist of the chairperson or a vice-chairperson, an employee representative and an employer representative.

4. Employees shall be entitled to equal representation on an administration committee with powers of the administrator as defined in the Act and/or equal representation on a joint board of trustees. This right could be exercised by the request of a majority of active plan members or a union entitled to represent a majority of plan members.

5. In the event that all or any part of the employer's business is sold to a new employer, the new employer shall assume all assets and liabilities of any existing pension plan. The old employer shall remain responsible for any unfunded liability on the date of sale if the new employer subsequently becomes insolvent and the employees shall be entitled to adequate notice before any change can be made to the plan.

6. Where a pension plan is created and/or supported by a collective agreement or statute, no amendment shall be registered without the approval of any bargaining agents representing members of the plan. Any union certified as the bargaining agent for plan members shall be entitled to notice of all proceedings concerning the plan and entitled to represent the employees in any such proceedings before the Commission.

7. All benefits, whether arising from service before or after January 1, '87, shall be subject to vesting after two years of plan membership and the requirement that 50 per cent of the benefit be covered by employer contributions.

8. Any waiting period for plan membership shall be no more than the normal period of probation and in no event more than six months.

9. The maximum eligibility requirement for part-time employees shall be the equivalent of 700 hours per year over the normal period of eligibility and in no event more than 350 hours in six months.

10. In order to facilitate portability of benefits for employees changing jobs, employees shall be entitled to transfer the commuted value of any deferred vested benefits into the pension plan of a new employer, which plan shall

accept the transfer.

And prior to being in a position of responding to any questions members of the committee might have about our submission, Mr. Pattinson would like to make a comment as a further explanation of our position on point 5.

Mr. Pattinson: Yes. I would like to highlight the problem that we are running into more and more on the sale of the business where the predecessor employer does not turn over the pension fund to the successor employer. And the impact this has, particularly on a flat benefit, defined benefit plan, is that it is almost impossible in the future to be able to negotiate any improvement in the past service benefits, which is the normal procedure, because the predecessor employer has retained that amount up to the date of sale.

This is something that we think this committee has to look at very seriously, and we do go into more depth in it in the full brief.

Mr. Chairman: Thank you very much.

Mr. Wilson: Excuse me; Mr. Lee would like to make a comment.

Mr. Lee: Yes, again, just by way of introduction, I wanted to bring it to the attention of committee members that this brief addresses considerably more issues than have been highlighted in the summary. The Federation has undertaken a careful clause-by-clause review of all of the elements of Bill 170. We have not been able to present all of our concerns in that connection in the summary or even in the main body of the brief for that matter.

So I want to make a special note of the appendix at the end of the main body of the brief which reviews Bill 170 on a clause-by-clause basis indicating some of our -- I do not want to call them "smaller" concerns because they are important points -- but also some of the technical problems that we see with the Act as drafted.

Mr. Wilson: Thank you, Mr. McCague. We are prepared to respond.

Mr. Chairman: Thank you. Mr. McClellan?

Mr. McClellan: Thank you, Mr. Chairman. Thank you, Mr. Wilson and your colleagues for a very thorough and a very thoughtful presentation. I am sure it will not come as any tremendous surprise to you that a number of the points that you have made particularly with respect to surplus fund withdrawals, inflation protection and union representation in the administration and management of plans and the

question of retroactivity of the two-year vesting divisions are already at the draftsman's office and will be amendments that my colleague and I will be putting forward when we get to the clause-by-clause stage, and we will study very carefully the more detailed presentation that you provided us with today.

I wanted to ask about one or two points. You have referred to -- and I am just trying to find it -- you referred to the use of surplus accounts by companies to write off their annual service contributions. We are familiar with the Conrad Black and Abitibi kinds of examples where people are applying to the Commission to appropriate surplus pension funds. How frequent, in your experience, is the use of surplus accounts to write off the annual service contribution as Ontario Hydro attempted to do this year?

Mr. Lee: I will answer that question. In our experience, virtually all pension plans in existence today are going through a process of reducing or eliminating the employer's ongoing contributions as a result of applying surplus to that purpose. There are very few exceptions.

Mr. McClellan: I guess it is difficult to speculate. If you had been here this morning, I was struggling to obtain information from the Pension Commission about the amount of the surplus accounts in Ontario and was told in so many words that I could not have it. Do you have any sense of what kinds of amounts we are talking about?

Mr. Lee: Well, yes, some sense. I am not sure whether you would prefer to talk on an Ontario basis or a Canada-wide basis.

Mr. McClellan: Seventy per cent of plans are registered in...

Mr. Lee: Right. On a Canada-wide basis there is something in excess of \$120 billion in pension funds. I would expect that the surplus in those funds, at least originally, before it started being eaten away by "contribution holidays," as some people like to call them, for employers was on the order of \$20 billion.

Mr. McClellan: \$20 billion?

Mr. Lee: \$20 billion I would say.

Mr. McClellan: And you have some sense that the main grab of surplus funds is coming through what we heard this morning described as "contribution holidays." I forget the euphonious phrase that was used by your regulatory agency to describe this process, Minister. I think it was a "contribution holiday" or a "manual service holiday" which was the phrase used to describe the theft of workers'

pension funds.

Mr. Wilson: I suspect that view is correct that that is the vehicle to choose because it is less spectacular and attracts less public focus and wrath and rage, and so that view I take as being essentially a correct one, that is the way that most of the surpluses are deteriorated.

Mr. McClellan: And again you are calling quite clearly and unequivocally for the elimination of the ten and forty-five rule for the application of two-year vesting right back to cover all plan members?

Mr. Wilson: That is correct.

Mr. Lee: If I could just draw the committee's attention to the detailed consideration of that particular question in the brief, we offer some examples of the ludicrous situations that can develop with the overlapping application of the forty-five and ten rule and the two-year rule, particularly since the two-year rule will apply to improvements negotiated after the 1st of January, 1987.

If we went further and did examples of how these rules would apply to, say, a final earnings plan as opposed to a career average or a flat benefit plan, we could generate even more ludicrous situations which will, in fact, be experienced in practice if the Bill is not amended.

Mr. McClellan: How long would it take -- I have not had a chance to look at the sections of your longer brief -- but how long will it take for somebody to build up a reasonable benefit under the Bill as it is written now with the ten and forty-five rule applying to all moneys up to January 1st of '87?

Mr. Lee: Glen has just suggested that it would take sometime in the next century I believe. But you would have to be a person who ultimately took a job with an employer and stayed with it consistently through to retirement. You would have to have at least twenty years of employment with a single employer to get any significant benefit out of the system still because, as you will see, by looking again at the examples we have offered of how the commuted value is actually determined and how the employer's share is actually determined, it is very difficult.

It is next to impossible for a younger person to get any significant amount of money out of this provision. We are talking about, in the typical contributory career average plan in the private sector, an employee contributing say \$1,000 to \$1,500 for a year's service and getting back perhaps \$100 or \$150 from the employer in connection with that contribution. If anybody changes jobs regularly, they will never develop anything like an adequate pension out of

this approach.

Mr. Wilson: Reference is page 21 and 22 in the main brief.

Mr. McClellan: Okay. We will study that very carefully. And at some point I am sure we will be fascinated to hear from the Minister why he is running around talking about bringing two-year vesting when, in fact, he is intending to maintain the ten-year service and age forty-five rule for all pension funds invested before January 1st, 1987. I am sure that will make a fascinating explanation, Mr. Chairman.

Thank you.

Mr. Chairman: The Minister has a question for you.

Hon. Mr. Kwinter: I would like to just get a basic feeling as to where you are coming from on what I consider is a very key element here. In your recommendation No. 1, you say that the "use of surplus to reduce ongoing contributions to a pension plan shall be prohibited until full provision has been made to protect the value of benefits against inflation."

When I listen to my colleague, Mr. McClellan, his attitude is, once a nickel goes into the pension fund it stays there and can be used only for the benefit of the employee. What I would really like to find out is what is organized labour's position if you have a defined benefit plan? Plans sponsor plan members through their union, through their representative, sit down and negotiate a deal. They negotiate a promise that on retirement "I will get 'x' number of dollars."

The big issue that we have and one that we agree with is that at the present time, when that promise is delivered, you are not getting what you thought you were being promised because inflation has eroded it.

If there is a provision for inflation protection and that promise is delivered with inflation protection on the day of retirement, is it the position of labour that notwithstanding that that is done, if there happens to be some surplus in the fund, it can only be used to enhance that package or is there some provision that it can either be withdrawn or reverted to the plan sponsor?

Mr. Wilson: Well, our view is simply that the use of surpluses can come into play after we have got the indexing legislation in place. Quite frankly, that is going to eat up...

Hon. Mr. Kwinter: The point that I am trying to

determine is one of principle, that is there is a feeling that notwithstanding the agreement that is made which is a promise by the plan --

Mr. Wilson: Let me interrupt. What is the extent of the agreement? Are you talking about the agreement under a defined benefits or the understanding at the time of the bargaining of what that was going to cost to negotiate that into the package?

Hon. Mr. Kwinter: I am talking about an agreement under a defined benefit plan indexed to inflation.

Mr. Wilson: Where it is assessed at fifty cents an hour?

Hon. Mr. Kwinter: Whatever.

Mr. Wilson: Well, it comes into play because that is part of the institution.

Hon. Mr. Kwinter: No. I am talking about the principle. What I am trying to do --

Mr. Wilson: So am I.

Hon. Mr. Kwinter: Well, I am trying to say that when you enter into a bargaining agreement, are you saying, "This is our minimum requirement, and when we get to it, when you really have to deliver, we are going to have to renegotiate this thing"? Or are you saying, "We are asking you now, as part of our agreement, that when our members retire, this is what they are going to get plus inflation protection. And if you deliver on that promise, that is your sole obligation to this agreement"?

I just want to know the principle so that I know where we are coming from because that is critical to what we are talking about.

Mr. Wilson: I guess the difficulty we have is we do not know what the inflation factor is, so how do I answer your question?

Hon. Mr. Kwinter: Well, I do not really care what it is.

Mr. Wilson: Are you proposing a hundred per cent inflation, for example?

Hon. Mr. Kwinter: I do not know. I am not interested in the numbers; I am interested in the principle. I am saying to you, "If we go --" Let us use your argument. Let us say and I am not --

Mr. Wilson: Well, let me respond in principle. What we want is a person who retires in 1987 to have the same purchasing power in 1997 that they had when they retired in 1987 relevant to their income.

Hon. Mr. Kwinter: Okay. But any more than that?

Mr. Wilson: It is negotiable. Obviously, that would be a relationship between the employer and the union involved or the parties involved in negotiating the collective agreement; would it not?

Hon. Mr. Kwinter: You see, the difficulty that I have is that there is an assumption put forward by some that every dollar of surplus that is in a pension plan belongs to the plan member.

Mr. Wilson: It is no assumption; that is a fact.

Hon. Mr. Kwinter: Well, this is the point that I am trying to determine. You are saying that it is a fact.

Mr. Wilson: That is right.

Hon. Mr. Kwinter: Is it a fact?

Mr. Wilson: You are darned right it is, because that party that negotiated that collective ingreement took credit for that amount at the bargaining table; therefore, that money was not deferred to any other part of the package. So anything that stems from that belongs to the plan participants.

Hon. Mr. Kwinter: The point I am making is that at the time of negotiation, if you enter into an agreement that says, "This is a promise, and it is fully --" to use your argument and I am not in any way saying that that is what it is going to be "-- it is fully indexed and we pay you that."

Mr. Wilson: Well, then that meets the criteria that we talked about. We negotiate pensions based upon what standard we want people to have when they enter retirement.

Hon. Mr. Kwinter: Yes.

Mr. Wilson: Okay. So whatever you are going out at -- 50, 55 or 60 per cent of your earnings -- that is the standard agreed by the parties at the bargaining table. What we want is that standard still in play ten years down the road, that that person's purchasing power is relevant to what it was when they went out -- relevant to the earnings was what it was relevant to when they went out on the street.

Hon. Mr. Kwinter: Let me put it in a simpler form for

you that maybe you can give me an answer on. Twenty years down the road the company goes out of business. They wind up the plan. They meet all of the requirements. They pay out the promise geared a hundred per cent to inflation. There is \$20 million left over. Who does that money belong to?

Mr. Lee: It belongs to the employees. The Federation is saying that there should under no circumstances be provision to withdraw surplus where a plan is ongoing or wound up -- never, under any circumstances. If the plan is ongoing, and there has been made full provision to protect the value of benefits against inflation, then it would be allowed under the Federation's view by the legislation that the employer could apply surplus against his ongoing contributions but only if he has made full protection against inflation. That would still leave it open to the parties in collective bargaining to negotiate an agreement which said that the employer was obliged to contribute at least a minimum amount and that would under no circumstances reduce his contribution.

Mr. Chairman: Mr. Lane?

Mr. Lane: Thank you, Mr. Chairman. Mr. Pattinson, I believe it was you that made reference to recommendation 5 and said that we were going to have to deal with that at some length in this committee. I just do not quite see how you see it working.

"In the event that all or any part of an employer's business is sold to a new employer, the new employer shall assume all assets and liabilities of the existing pension plan and the old employer shall remain responsible for any unfunded liability on the date of the sale."

What happens if the old employer dies or moves away or whatever? How is he going to be responsible --

Mr. Pattinson: Part of the problem today is the old employer is not transferring over all the assets and the liabilities. He is retaining that responsibility but he, in effect, freezes the people in the plant at that benefit level. We are saying it should be transferred to the new employee; he should take all obligations.

You cannot negotiate with a ghost and you can find people who have their benefit levels five years later are, say, at \$10 and the new benefits have been increased over the years to, say, \$15.

And I could site you examples of where that has happened, and it is very difficulty to negotiate with that new employer improvements for past service that are not his

responsibility. That is why we are saying it should transfer over to the new owner and he should bear those responsibilities.

We go a little further by saying the old employer, or the predecesing employer, if he has got an unfunded liability and the plan goes belly-up -- some of them do -- that they should not run immediately to the government through the Pension Guaranty Fund but there should be some obligation on that predecessor employer because he was the one who was responsible at the time for that liability.

Mr. Lane: I can understand what you are saying and I understand that at the time of the sale the whole thing should be transferred to the new employer, but if it is not, I could see some difficulty in holding the old employer liable for it because he has probably crossed the river by that time. We do not know. How are we going to collect it? That is the part that bothers me in part of the Bill. How are we going to hold somebody responsible for something some time after it all happened?

Mr. Pattinson: Well, he has been funding that responsibility or that liability over a period of years. We have seen too often where they sell out and shortly after there is a claim made.

Mr. Lane: I guess to me it would be more simple to make sure that it was all transferred at the time of the sale rather than holding him liable for it afterwards.

Mr. Pattinson: Yes, I agree; that is what we wanted -- it changed over. But we have seen some sales that shortly after the sale the new company goes belly-up.

Mr. Wilson: Mr. McCague, I just wanted to ask the Minister a question, if I could, following up to your comments as I think of it. When a benefit is negotiated on behalf of employees at the bargaining table, who does that benefit belong to?

Hon. Mr. Kwinter: The employee.

Mr. Wilson: That is fine. So it is a course of natural justice or logic that any benefit that flows from that is theirs as well?

Hon. Mr. Kwinter: No, because you have to understand --

Mr. Wilson: What is the distinction?

Hon. Mr. Kwinter: Well, let me just -- Let us just go through the scenario. And I am just putting this thing out and I am saying I want to hear from you only so that I can

get an idea of where you are coming from to discuss it.

I have sat on pension committees when I was the Chairman of the Harbour Commission and we had actuaries come in and compare our performance with the standard and see how we fit into it and all that business, so I am very familiar with it. What happens is that you have some pension plans that are being extremely well administered and others not so well administered.

There is an interest on behalf the of the plan responsor to administer it well if there is some benefit that is going to accrue to them down the line. If you are saying: "This is the deal. You have for put this money in because this is the promise -- you know, the defined benefit plan -- and whatever winds up at the end goes to the plan employees, the members, and that you as a sponsor have no interest in that whatsoever other than as an obligation to your employees. You have the obligation to administer this in a prudent manner."

Mr. Wilson: Well, the point that you fail to or refuse to recognize is that that benefit, that amount of money, has already been attributed to the package and as a result of that, that money does not flow in any other direction. When you negotiate a pension plan and the employer actuarially costs that out and comes back and says, "That is going to cost fifty cents an hour to give you that benefit," then we accept that.

That is a determination or a determinant on what happens in the remainder of that set of negotiations relevant to the amount of money there, because any union negotiator will tell you there are two steps to collective bargaining. One is to define the pie and the second is to determine which way the slices are going to go. And if the pension determination cost or costs is part of the determination of the size of the pie and then it turns out it is not, then obviously we come up short. Do you propose to introduce legislation to allow us to recoup that in wages?

Hon. Mr. Kwinter: No, but the point is --

Mr. Wilson: That is what I thought.

Hon. Mr. Kwinter: -- the plan sponsor has an obligation whether or not the pension plan performs or not to meet that promise; is that not correct?

Mr. Wilson: All right. Then let us come at it another way. Let us give us equal responsibility in the determination of the funds and we will accept that -- that package.

Hon. Mr. Kwinter: No; no. I am not asking you to accept anything. I just wanted you to clarify.

Mr. Wilson: Okay. That one is not good enough for you either?

Hon. Mr. Kwinter: No. I am not saying that. I am not negotiating with you. I am just saying to you that at the present time --

Mr. Wilson: We are negotiating with you because your government has the authority to redress this legislation to such a point --

Hon. Mr. Kwinter: Well, we are listening to you.

Mr. Wilson: -- it would be beneficial to the people. What I am trying to say is that we have million, in fact, billions of dollars that are out there that technically belong to workers because a determination has been made in the bargaining process that that was their money. And when you do not recognize that you cannot just -- And then we come back to you, like I just said, and said, "All right. Let us set up a situation whereby those plans participants have some say -- one, in investment, and two, in how that money will be distributed." You are not prepared to buy into that one either?

Hon. Mr. Kwinter: No.

Mr. Wilson: You cannot have both sides of the street.

Hon. Mr. Kwinter: You know, there is an old Bob Hope movie --

Mr. Wilson: I am not old enough to remember him; I am sorry.

Hon. Mr. Kwinter: Well, neither am I, but let me tell you that what you do is you remind me of a scene in it where he goes up to a bank teller and gives him a hundred dollars and says, "Could I have this changed?" And he counts it out and he sneers at her and she says, "What is the matter? Did I not give you the right amount?" He says, "Yes, but barely."

You know, it is exactly the same thing. What I am saying to you is this: If you enter into a contractual arrangement and that contractual arrangement is met, everything that you were supposed to get you have got plus inflation protection.

Mr. Wilson: But it is not met. It is not met. You are saying it is met once the determination of the benefit is met. We are saying to you the obligation is not met

because the cost is not apportioned properly. We say the obligation is met when we get our 50 cents on the dollar's worth out of that pension plan and where it only costs 30, then somebody owes us 20. You will not recognize that.

Hon. Mr. Kwinter: I am saying that union in negotiations --

Mr. Wilson: What are you trying to say?

Hon. Mr. Kwinter: -- you negotiate whatever you want.

Mr. Wilson: We do.

Hon. Mr. Kwinter: And whatever you can get.

Mr. Wilson: We do.

Hon. Mr. Kwinter: Okay.

Mr. Wilson: But all we are saying to you is what we need is somebody to close the door now. There is a loophole that says that people can walk off with workers' money. What we are saying is we want that stopped.

Now, there is another way we can stop it; we can go back to the bargaining table but do not want that. Do you want us to go back to the bargaining table in subsequent sets of negotiations and have strikes all over this province because we are trying to recover money from two or three sets of bargaining. Of course, it is a ludicrous situation.

Hon. Mr. Kwinter: Well, where we have a difficulty is that I am talking in the abstract and you are talking in the specific.

Mr. Wilson: Well, we bargain in the specific.

Hon. Mr. Kwinter: No; no. What I am trying to do is I am trying to find out a principle. I am not trying to negotiate here. I am trying to find a principle. What I am saying to you is let us forget about what is going on now. Obviously there are problems and that is why we are here. We are bringing in a new Bill to try and correct that.

What I am trying to establish is that when you sit down at the bargaining table -- and I do not care how you structure it -- you structure a deal that says, "Here is what we have to have, and not only do we have to have it but we want it protected against erosion by inflation."

But once you get that, is that going to make you happy? I am talking in the abstract. If you get -- however way you want to formulate it -- you get it, you get inflation protection and they say, "Here is what we promised

and we give it to you."

Mr. Wilson: Monty, I guess what you are saying to me in the abstract, if you are giving people the protection when they retire in 1987, that same protection of purchasing power in 1997, then we have to say "Yes" to your question.

Hon. Mr. Kwinter: Okay. And all I want to know and the added thing is, if there is money left over, where does that go?

Mr. Wilson: Well, we will figure a way to get it back because it is ours anyways.

Mr. Lee: There is two specific recommendations on that issue, too. What the recommendations of the Federation say is that where the plan is ongoing, the employer would be able to apply any surplus remaining after provision has been made for inflation protection to reduce his ongoing contribution to the employer. If he does retain exclusive control over the fund he does maintain a very real incentive to administer the fund efficiently if the plan is ongoing.

If the plan is not ongoing, the employees never get a chance to come back at that employer to negotiate improvements in their pension, and the employer should not be allowed to withdraw the surplus. We do not want employers to have a surplus to have an incentive to close their plants to get the surplus out of the pension funds, and believe me it will happen.

Mr. Wilson: Mr. McCague, I am sorry. I have to leave. Mr. Pattinson and Mr. Lee are prepared to continue. I have to go to Sault Ste. Marie and thwart the initiative of the federal government on behalf of the free trade initiative, and I would join your government to join us in that, Mr. Kwinter, more publicly than they presently are.

Mr. Chairman: Well, we will excuse you. As a matter of fact, if I am permitted, I would like to excuse the three of you.

Mr. Wilson: Well, I appreciate the power of the chairperson.

Mr. Chairman: Thank you very much, gentlemen.

Mr. Wilson: Pleasure. Thank you.

Mr. Chairman: The next presentation we have is from the United Rubber Workers, Local 232, Mr. Birrell and Mr. Lang. Will you please introduce yourselves or one of you introduce the three of you and then please continue.

Mr. Birrell: My name is David Birrell. I am the

President of Local 232 United Rubber Workers. On my left is Allan Lang; he is the Vice-President of the local union, and on my right I have Len Bruder who is the District Director of the United Rubber Workers in Canada.

Mr. Chairman and members of the committee, my name is Dave Birrell. I am President of Local 232, United Rubber Workers representing the workers at the soon-to-be-closed Goodyear factory at 3050 Lakeshore Boulevard West in Etobicoke.

Local 232 of the URW is the bargaining agent for the workers at the Goodyear plant which is to be closed on May the 31st, 1987, putting 1300 workers out of a job. The passage of Bill 170 before this date would enable approximately 300 of our people to qualify for their pension at an earlier date.

We would like you to focus your attention on Section 75 of the revised Act. This particular Section deals with the age and years of service clause which defines the eligibility for pension benefits upon wind-up of a pension plan. This is meant to replace Section 26 of the present Pension Act which states that a person must be 45 years old with no less than 10 years of service before they can qualify for the provisions of this Section. We feel that this is clearly an age discrimination clause and violates the Canadian Charter of Rights and Freedoms.

Under Section 75 of Bill 170, there are no age requirements and a simple formula of age plus years of employment totalling 55 would qualify a person for the benefits outlined in this Section. We feel that this is a reasonable compromise and does not penalize a person simply because of age.

Example: First person aged 45 with 20 years of service would be able to grow into his earliest possible pension date.

The second person, aged 44 with 20 years of service would not be able to grow into an early pension and would have to wait unless he was 65 years old.

Under present pension law, the second person is being discriminated against because of his age. Under the Bill 170, Section 75, the second person would be able to grow into an early pension like the first person.

We would like to impress upon you the urgency of our present situation. The plant will be closing in a matter of weeks. For hundreds of our members, the future will involve financial hardship, family disturbance and emotional upheaval. We implore you to act as quickly as possible to get the Bill before the Legislature for quick passage.

We also feel that Section 75 should be made retroactive to January 1st, 1987. In so doing, workers in several other plants other than Goodyear would have the opportunity to qualify for earlier pensions.

I wish to thank the members of the committee for the opportunity to present this brief on Bill 170 to revise the Pension Benefits Act, and I will be happy to answer any questions you might have regarding this brief and the position we have taken.

Mr. Chairman: Thank you. Anything either of you wish to add?

Mr. Birrell: We have a fair number of people who have sustained injuries in the plant and who fall into this category who will not have the forty-five and ten on May the 31st. Now, some of those people have sustained back injuries, have lost limbs, and their chances of getting employment after May the 31st are slim. Obviously if the Bill was passed, in particular Section 75, that would go a long way to help those people. At least they would have some kind of an income after they lose their jobs on May the 31st.

Mr. Chairman: Mr. McClellan?

Mr. McClellan: Thank you, Mr. Chairman. I gather you are making two points. One has to do with the urgency of your own situation, and I understand the deadline there is May 31st, so you need legislation in place to protect the 1300 Goodyear workers.

And the second point is you are questioning why pension members who are in a plan that is being wound up are not subject to ten and forty-five as opposed to Section 75 which has an age plus service equals fifty-five. I would direct that to the Minister, if I may, Mr. Chairman. I was confused, too, as to why there was a difference in the way people were entitled to a benefit depending on whether or not the plan was being wound up or not.

And number two, would it not simply make sense to extend the two years vesting rule? Well, deal with the first part first and then we can discuss the application of retroactivity of two-year vesting.

Hon. Mr. Kwinter: Well, what we should do is call on the people who can give you the background on this because this is -- A lot of these items have been discussed and I would assume -- I do not know whether Jerry, you can correct me. Is this part of the consensus?

Mr. Cooper: No, sir. Do you want me to answer here?

Mr. Chairman: We had better get you to a mike somewhere.

Mr. Cooper: Section 75 of the Bill does not relate to vesting at all. It establishes the situation of what happens when a plan is wound up. Right now under the equivalent Section in the Pension Benefits Act persons who are forty-five and ten or statute vested are entitled to extra entitlements on a plan windup, and it is directed -- the philosophy was that it was directed to older, longer-service employees who may have more difficulty finding subsequent employment.

Because there is a reference to age in that formula, Bill 170 goes the magic number route -- and you mentioned before the number is 55, a combination of age and service -- but it does not relate to the entitlement under the plan. It relates to extra benefits that someone who fits in this category is entitled to on a wind-up.

Mr. McClellan: But the brief indicates that the present Act triggers in extra benefits on a forty-five and ten basis; is that correct?

Mr. Cooper: The reference for the equivalent provisions is someone who is forty-five and ten, and we are going to the formula of age plus service.

Mr. McClellan: And the witnesses are arguing that the new proposals are more stringent than the old ones.

Mr. Cooper: No. I think they are arguing to the contrary, that they would like Section 75 to be retroactive.

Mr. McClellan: Okay. So then we have the nub of the question which is retroactivity which we raised earlier. Is this something that could be -- I do not see myself why this section could not be given a retroactivity date since there are going to be a number of retroactive features in the Bill when we pass it.

Hon. Mr. Kwinter: Well, the only difference being that in the retroactive features of the Bill we did that in order to make sure that we could regularize a transition. We had sent this document out for circulation. We had a draft Bill that was distributed a year ago March. The industry has been looking at this Pension Benefits Act and have been anticipating it.

We had hoped that we could target January the 1st, 1987, as implementation date. We could not, but what we did is we felt there were certain things that could be done without legislation where we could stipulate that these will be retroactive to January the 1st, 1987, and that everything

else that required legislation would come into effect January the 1st, '88. It would all have to wait for legislation but that in order to sort of make the transition, we would put everybody on notice on these particular provisions.

But the whole Bill is meant to be prospective and not retroactive. I have not got an idea of the cost implications, but let me tell you that they would be horrendous.

Mr. McClellan: I understand what you are saying but you did not introduce the Bill until December 9th, '86, so obviously you were not able to meet your January 1st, '87, deadline for reasons which you have outlined.

Hon. Mr. Kwinter: Yes.

Mr. McClellan: And nobody is disputing that. The consultation process, et cetera, took a lot longer than you had anticipated. But we have had the experience of rent review legislation that went through precisely the same lengthy consultation process, and the original deadlines, which were August the 1st, 1985, obviously could not be met. But when we passed the Bill last fall, we made the Bill retroactive until August 1st, 1985.

There were cost implications there but people had been put on notice exactly as the community has been put on notice with respect to Bill 170. And I think that the argument that applied to the rent review legislation is equally valid when applied to this legislation. Nobody is going to be surprised. Everybody was expecting this legislation to be in effect as of new year's day, 1987, and these workers are, quite frankly, in a desperate situation.

I think that they should make a commitment not to allow their money to be appropriated from them. We should make it possible for them to obtain their pensions. I think that is easy to do; it is within our power to do with a simple amendment that --

Hon. Mr. Kwinter: Well, that is something we will have to deal with at clause-by-clause.

Mr. McClellan: I think we have to and I am sure all members of all three parties would support that proposition. I certainly hear the message that you are giving loud and clear, and I think you have every right to expect the protection of legislation in the terrible circumstances that the Goodyear workers find themselves.

Mr. Chairman: Mr. Lupusella?

Mr. Lupusella: Thank you, Mr. Chairman. The question

actually was supposed to be raised before the Ontario Federation of Labour, but I think that I can make some relationship between their question and their brief. On their presentation in the blue book in answering to problems affecting Bill 170, of course they brought to our attention negative expects of the Bill. Did you see any particular improvement to the scheme of the private pension which eventually will bring positive aspects to workers?

They talked about negative aspects of Bill 170. Do you see any positive aspects of that Bill which eventually will improve the pension scheme for workers across the province?

Mr. Birrell: Well, I really have not had a lot of time to read through the Bill and I have not read the OFL's brief. I have been busy with other things. When a plant closes down it is a horrendous problem of not only the everyday things that we have to handle, but over and above that, the plant closure.

Certainly I think that with some improvements in the Bill, particularly Section 75 which is one we are particularly concerned about at this time. I do not really know how to answer you other than that, but I really have not had a chance to read all of the Bill and read the Ontario Federation of Labour brief.

Mr. Lupusella: I accept your explanation and I am not going to pursue the same question. But they made the statement on page 1 which was part of their introduction, and their position was that the overall level of benefits enables working people to maintain their living standards in retirement.

Now, let us think for a moment. At age 65, immigrants across the province of Ontario do not have enough contribution to reach the maximum on their Old Age Security Pension and the Canada Pension plans. Therefore, the federal government comes out with a formula which is called the "Supplementary Pension"; am I correct?

Now, if Bill 170 makes improvements for people, at age 65 they have to declare this private pension plan to the federal government which means a reduction of their supplementary pension which they are presently receiving from the federal government. What is your position on that?

Mr. Birrell: Well, we are in the same position. Anybody who retires before age 65 is entitled to a supplemental pension from the company and obviously when they reach age 65 the supplemental pension drops away and the Canada Pension takes over. We would love to see that changed whereby our members could hang on to the supplemental pension and still receive the Canada Pension,

too.

Mr. Lupusella: But, you are well aware that immigrants who came to Canada maybe ten, eleven years ago do not receive the maximum from the Canada Pension Plan because they did not contribute for so many years. So the level of their pension is low and therefore the supplementary pension will provide further benefits to reach the maximum amount of their pension.

If we are fighting now to improve the private pension plans of workers across the province of Ontario, do you agree with me that a good majority of workers who are immigrants eventually will lose their supplementary pension because of this improvement?

Mr. Birrell: Well, I do not know whether I could really answer your question or not; I have never really looked at that problem. I understand what you are saying that people who have only been here for ten or twelve years and obviously they have not made enough contributions to the Canada Pension Plan to qualify for full benefits. I certainly think something should be done about it but I do not really know --

Mr. Lupusella: So do you see as a result of that really financial gains coming from the private pension plans when in fact the federal government will diminish the supplementary pension? I am sorry that you were trapped by my questioning because I was supposed to raise this question with the Ontario Federation of Labour.

Mr. Birrell: Maybe I do not really understand your question. Are you saying that people in the trade union movement should try to improve the lot of those people who have only got ten or twelve years' contributions in the Canada Pension Plan? I think probably the trade union movement would find that pretty difficult to do because you bargain as a bargaining unit. You bargain for everybody as a whole and I think that we would find that difficult.

Mr. Lupusella: Thank you very much.

Mr. Chairman: Mr. McClellan?

Mr. McClellan: One other question I almost forgot to ask and that again is to the Minister. Can you tell us whether the pension plan in question here has a surplus in its account? I am sure your officials are still here lurking around.

Mr. Kruger: No, it does not.

Mr. McClellan: It does not.

Mr. Kruger: No.

Mr. McClellan: Oh, you know that?

Mr. Kruger: (inaudible)

Mr. McClellan: Good. Thank you, Mr. Chairman.

Mr. Chairman: Any further questions? Thank you very much, gentlemen.

Mr. Birrell: Thank you.

Mr. McClellan: We have got the information about one. Now there is only 4,999 to go.

Mr. Chairman: The next presentation is from D.S. Rudd Associates Limited. Mr. Rudd, if that is the correct way to say it.

Mr. Rudd: That is right. The Scandinavian version has two "u's" and it is called "Rude" which I sometimes get because of the (inaudible). Today I shall never be "Rude" always just "Rudd."

Mr. Chairman, Mr. Minister, gentlemen, ladies, my name is Bill Rudd. I am an actuary involved with pension plans since before I was an actuary really in 1954 at least part time. I am part of the ancieu regime in that I was on the Pension Commission of Ontario from 1963 until I resigned effective from the election call in 1985, having been nominated in 1984 for a provincial election.

I spent most of my working life with London Life Insurance Company and left there in '82; I had been their chief operating officer. I have been running a small actuarial firm since. I am half-time at the University of Western Ontario which is endeavouring to set up a Canadian Centre for Pension Studies. I lecture there in social and private pensions in Canada and in an elementary actuarial science course.

My brief today is quite brief. I could write quite a bit but technical stuff generally I will be sending directly to the Pension Commission of Ontario. They are used to hearing from me.

My first item is Sections 37 and 38, something I am trying to untangle. Way back in 1963 the first Act passed just dealt with vesting in pension plans at age forty-five and ten years of service. Multi-provincial companies promptly descended upon the government saying, "No fair. You cannot make legislation; you are ultra vires affecting our employees working in Manitoba, Quebec and wherever."

So we drafted a uniform Act in consultation with the other provinces, and I was part of the drafting team and I have been involved in a lot of the drafting of amendments and regulations over the years. We devised a concept of uniform Act and put in those words, "service in Ontario or in a designated province."

Good idea. We had hoped we could get going the same concept as there was in the Insurance Act, where there was uniform legislation in all the provinces -- even Quebec now for all intents and purposes -- and that people in pension plans all over Canada -- it did not matter where their employer was, it did not matter where their plan was registered was -- the various provinces passed legislation, common law, and one jurisdiction would administer the plan on behalf of all the other jurisdictions.

Hence the concept of adding, "and in a designated province" because every province was going to have the forty-five and ten rule. Well, unfortunately after some years, uniformity disappeared. Pensions are too sexy compared to life insurance law to have uniform legislation. We see it here in Ontario. There was a consensus. The provinces are not following it. Ontario is going to put in indexing though the western provinces were against it during all the negotiations.

So uniformity has disappeared. There is no longer forty-five and ten in other provinces. Bill 170 does not contemplate it but it will not be January 1, 1987, in the other provinces -- just in Alberta and in the federal Act and the things under federal jurisdiction like the banks and so on.

The wording does not work and it causes confusion. Thus, I think the words, "in a designated province" should be dropped. The Attorney General's department told us then we could legislate with respect to service in Ontario. That should stay, but "in a designated province" is just confusing.

Incidentally, there is at least one province that believes that the final location determines everything. A chap is working in a multi-provincial plan in Saskatchewan. He terminates employment in Saskatchewan. He gets the Saskatchewan law. If before that his employer transfers him to Ontario and he terminates employment in Ontario, everything is Ontario law. If before that though he is transferred to B.C. which has no legislation and terminates employment there, no statutory vesting at all.

Well, most of us do not follow that; we believe the concept that is in this Act and that Ontario has power to legislate with respect to vesting, locking in and all those things with respect to benefits earned or created while in

Ontario. So please drop the "in a designated province" in Sections 37 and 38 and other sections such as Section 64 dealing with locking-in of contributions.

It is necessary to support the inter-provincial agreement. This section could be included elsewhere in the administration of other Acts just as there is material in the Regulations dealing with the federal Act.

There is a technical note at the end of the brief which comments that vesting is a state that occurs without terminating employment. For U.S. corporations we are required to value plans showing the amount of the vested benefits. "Vested" means having met the requirements of age, service or whatever. The way the Act reads in this redraft, vesting only happens if you terminate. Minor technical point.

The next thing, Section 38, the two years of membership. The consensus was five years of service and somehow that evolved into -- Sorry; five years of service in conjunction with a maximum eligibility period of two years. Alberta still has gone that way. Somehow it evolved into two years of membership.

Well, for an employer that grants eligibility almost immediately, that makes the plan much more expensive, more cumbersome to administer, it will encourage employers -- I would have to advise any employer: Go to two year eligibility. I would suggest you go to four year service and in conjunction with maximum two-year eligibility, that is two years in the plan vesting as usual. But it will not penalize employers who let employees into pension plans earlier. In fact, go back to five years; that was what the consensus was. Minor point but another straw on that camel's back that is making pension plans very difficult to justify.

Section 40(1) in Section 40 in effect turns the main purpose of this section here -- I have got it in my brief -- turns almost all contributory pension plans into a money purchase plan for the great bulk of their employees up to December 31st, '86.

I had a large part with that wording being in the old Act to protect employees as interest rates rose and employee contributions provided ever more value even greater than the value of the deferred pension benefit. It still is required; it should be at the end of the Section.

What happens now, all the benefits after January 1, '87, there is the 50 per cent cost sharing in the contributory plans. The employee contributions can not provide more than half the benefit. Great job for actuaries. Any time anybody terminates employment, an

employer has got to get an actuarial cost of the benefit. But anyway there is a limit and excess employee contributions can be refunded.

Human Rights codes do not let an employer charge an employee an increasing contribution by age for the increasing cost of the benefit. However, we get around it by the 50 per cent rule. And after you quit we can then readjust the cost. Fair game. But the test that the pension benefit cannot be greater than provided by employee contributions should then be applied after that to the total pension from pre-'87 and post-'87 and the remaining required employee contributions that were not released under the 50 per cent rule.

The way it is now, in effect, it is a retroactive increase in cost to employers with contributory plans which will show up in the future. The principle is okay; the subsection is in the wrong place.

Section 49 - Pre-Retirement Death Benefits: Ladies and gentlemen, how this all got into the place, into this act -- small "a" act in general -- was that everybody in the many years of pension reform, which went on interminably, everybody is concerned about all the widows without any pension income in their retirement years so the thought was: Let us force pension plans to provide a death benefit which would be locked in just like the husband's money was -- if I may assume a husband and wife relationship; I am not saying his and her all the time -- just as the husband's money was locked in if he terminated employment. Similarly, if he died there would be a locked-in death benefit that the widow would have to put in a locked-in retirement savings plan so that when she got to 60, 65 or whatever, she would have something that she would be forced to use as pension income.

I do not know what happened in the inter-provincial conferences at the upper levels -- I used to be at the official level, not at the Ministerial level -- but somehow all that got lost between 1984 and now. Now, we find in Section 49 pension plans must provide a death benefit -- a very inefficient way to provide a benefit because it is taxable income to the beneficiary. That is why most plans provide the death benefit through group life insurance. They must provide a death benefit; the widow can spend it however she sees fit -- which in one way is all right -- but the original purpose, as I say, is all lost.

We increase the cost of pensions to provide a taxation in effect of death benefits which therefore now we are going to have provisions you can provide through group life insurance. Why not legislation that every employer must provide group life insurance if that is all we are trying to do? Why increase the cost of the pension plans?

So I am whistling in the dark at this stage of the game, but there is the background of how this idea arose and it has now all disappeared. It is now just a compulsory death benefit that in a non-contributory plan increases the cost of pensions by about 15 per cent to provide what the employer usually provides through life insurance.

So either return to the original concept of a locked-in benefit for that widow's eventual retirement income or drop it.

Section 49 and Spouse: When I was dealing with the federal boys on Bill C-90, the corresponding federal law, I asked an actuary in the department of insurance on this question of spouse and it is worse in the federal Act. It is your legal wife, your bigamous wife or the last gal you lived with for one year. I asked him, "Does the chief record keeper of the federal civil service plan know whether you are living with your wife or not if you die and have to pay a death benefit?"

He said, "It does not matter because we are not going to be underneath the Pension Benefits Standards Act." Imagine in your own civil service plan this business of you have got to pay it to the spouse. Who is the spouse? You do not know.

Secondly, why force the employee to pay his death benefit to his spouse? A happily married man with a rich wife or a happily married woman with a rich husband, you do not require that in group life insurance. Why are you suddenly landing in on the poor pension plan as if they did not have enough administrative problems. It is part of that idea that is long lost, this locked-in pension for the widow. Let the pension plan member handle his or her death benefits as he sees fit.

My gosh, if you must have a death benefit, why get all tied up except maybe in the early retirement period where you can say you must assume he early retired and elected that option of joint and survivor annuity.

This is an example of what is frustrating people with pension business, the overkill that is in this legislation that happened because it dragged on for so long. The major issues like indexing as ten years ago disappeared and we are into things that are nothing about administrative headaches.

That leads me to the Family Law Act. I just spent last Saturday at a Law Society of Upper Canada seminar for local lawyers, and, much to my embarrassment, judges, because I used the example of a case I have been in with a judge for a week as an expert witness.

Pensions and divorces are becoming terribly

complicated. You have one regulation in the draft; please do not confuse an already difficult issue. I think the Family Law Act has to be rewritten and the Regulations if anything should be under there -- not under the Pension Benefits Act.

There is one thing you might look at in this. I am not sure that the court orders involving division of pensions also incorporates sufficient power to do what Judge Kerr (phon.) wanted to do in the Porter (phon.) case and also divide the widow's pension. If any of you members die, your widow gets a pension. Well, if there is going to be a court order dividing your pension with your first wife and your second wife, the judge should be able to divide clearly the widow's pension between your first wife and your second wife. All of you I trust are happily married and this will never become a problem.

Section 53 - Sex: The Ontario Human Rights Code in force for many years now recognizes that under the defined-benefit type of plan ruled again as benefits; therefore, benefits shall be equal and they almost always were in most plans anyway. In fact, females had a better benefit often of greater value. They could retire at 60 before these things. But, on the other hand, a money purchase plan they recognize as another animal. Equal contributions: equal value was the principle.

Now Section 53, and it is a popular thing, states that the amount of the monthly benefits must be equal under a money purchase plan that automatically confuses and destroys a simple contribution greatly liked by the small employer who wants a simple plan, does not want to be paying highfaluting expensive actuaries to do all kinds of plan design and evaluations and calculations and terminations of employment.

All of a sudden he has got an actuary involved for a continual changing additional contribution for females or to find non-existing unisex rates which eventually be effectively female rates.

No; I cannot recommend a money purchase plan to any small employer any longer. With all the bureaucratic problems that we are going to have in running pension plans, that is just another one that is killing the simple plan. I would say: "For gosh sake, Mr. employer, do not touch the Pension Benefits Act; go to group registered retirement savings. Stay away from the Pension Commission of Ontario or whatever province you are in. Keep life simple for yourself."

So I recognize that equality by sex is a lot of political power. It is what is meant by "equality." I suggest you look again at the Ontario Human Rights Code and not worry about the purists and the Charter of Rights until

you have to.

And that leads me to Section 54. Mr. Minister, I did not know you were going to be here today and I have got a statement here: "I find this one amazing and I am surprised that the Minister allowed it to go through." I presume you had strong pressure on you from some place.

The joint and survivor pension: You are going to hear a lot about this and I am not going to take much time. In principle it contradicts Section 53 which said there must be equal benefits and not equal value. If applied logically to the defined benefit plan, you have got to give males higher pensions than females because their pension is of less value.

What has been acceptable in most civil service plans, including yours -- the province of Ontario, the federal civil service -- is in the Canada Pension Plan. In negotiations for that, Mr. Kwinter, the government should have insisted that the Canada Pension Plan be changed as part of the round they just went through. It is suddenly a no-no. And it has caused a lot of hilarity out there. I would suggest you drop it.

Indexing: You heard about it today. It is not the purview of this committee. I would like to say that personally I agree there should be some type of indexing such as we had in the '84 proposals, but it should be capped. There is no private sector employer can depend on what a future government will do in printing money bringing on inflation.

You know, inflation used to mean the debasing of the currency -- clipping the coins in the old days, putting a lead in with the silver and so on. Now inflation, in our common jargon -- ever since the oil shock anyway -- has come to mean any increase in the consumer price index. Taxes or whatever can knock it up, and I hear the government is going to try and develop one without taxes now that we are going to the transfer tax.

But looking at the state of government finances in Canada, I personally feel that it is a problem for me approaching retirement that we are going to have more inflation and therefore I would think we should have some inflation protection. But it has got to be capped; you cannot leave the private sector taking on unknown liabilities or they will just say, "To hell with it" and get out of that type of pension plan.

And incidentally, if you are going to require indexing, what is sauce for the goose is sauce for the gander. You should require that money purchase plans -- Also the employee, cannot get the high initial pay-out; he

has got to take a low initial pay-out and take an indexed annuity. You have got that one.

I got Don Blenkarn convinced that the -- Well, I will not get into that.

Incidentally, the probable inclusion of indexing makes it even more important that the re-drafting of Sections 37 and 38 not get into the vesting of stuff in other provinces which are outside of your jurisdiction. In the eighty-five one Guaranty Fund when the provinces were worried it might have to pick up some money on that, you will notice that the Guaranty Fund section only refers to benefits for service in Ontario, period. No designated provinces there.

Life Annuity: This is a recommendation. The complete flexibility of RRSP now. It is just tax deferred savings. You can do what you want with the money. You do not have to buy a life annuity. If you do buy a rift for an annuity certain, you can change your mind and commute it and spend the money going around the world twice on the QE II. Pay your taxes. It makes the pension plan look terribly restrictive -- just awfully restrictive.

So I would hope, Mr. Minister, that in co-operation with the Department of National Revenue, who have the main requirement as well as the -- that the term "life annuity" include the annuity certain to age 90 as it does for RRSP and the concept that registered retirement income fund so that people do not have to buy a life annuity.

You are going to have a lot of money, purchase money, in effect from these transferred amounts and so on floating around, and the federal politicians will tell you the heat they have been taking as the RRSP money came to maturity, which has lead to a continual series of liberalizations and RRSP rules -- People do not like to be told once they realize what is happening to them.

Even better, restore the pre-1953 -- that is how old I am in this game -- ability of employers to have a provision in the pension plan which gives the employee a lump sum option at retirement. I know a very large group of employees and a large money purchase plan, and the knowledgeable ones are going to want that plan suspended and from here on in it is group RRSP, the employer contribution just a taxable benefit, and then there is no forced life annuity when they get to retirement. Group RRSP is going to take over because there is so much restriction on pensions.

Now, about twenty-five years ago I was doing this to the portable pensions committee. I set myself up as the unasked-for representative of the small group pension plan because big labour, big corporations, appear at these things, but the little guy is not here. But we now have the

small business organizations. And that committee was full of zeal to lock in employee contributions, lock in all benefits right from an early age, try to tie everything down -- just as this Act is doing -- make sure that no employer or any employee could escape the majesty of the law which was going to do good to everything whether or not they wanted to have good done to them.

And thus it is with a sense of deja vu that I am here today looking at enactments. Just does that full of detailed requirements on the employer. As I said, doing good to members of pension plans whether or not they want to have it done to them.

Compounding all this -- you are not operating in a vacuum -- is that the feds down there in Ottawa have brought out a horribly complex new set of rules for taxation. Pension plans used to have a taxation advantage for most people -- employers and employees. If anything, they probably have a disadvantage now unless you are in a civil service-type fully indexed maximum plan.

There is no longer a taxation incentive to have a pension plan and with RRSP's full flexibility, no rules about eligibility, no rules about locking-in. Somebody aged 28 terminates employment, "You are too stupid to handle your own money; it has got to be locked in. I do not care if you want to buy that house. Your money is locked in." The new tax rules and the new Act combined put a large and expensive administrative burden on employers and unwanted restrictions on employees.

The actuarial profession is going to be doing double valuations under the draft regulations -- maybe a third because of the chartered accountants -- an actuary required to handle the termination of employment, which will be great for actuaries and great for civil servants but expensive and time consuming for employers, delays for employees. The intentions are good but extremely paternalistic. They deny young people access to their own funds on termination of employment, and I am afraid it will be self-defeating despite many good features.

I could not recommend any of my clients with less than 500 employees to have a group pension plan -- just could not do it unless there are particular circumstances.

Now, I am all for pensions; I devoted twenty-odd years of my life to working on it and I almost weep when I see what is happening. I am afraid the disincentives that are now there between the federal actions and what reform has turned up. As you will see I am for pensions and I am for indexes, so I am not a mossback.

So please remember young people do not want to save

for retirement at aged 28 when they terminate employment, not if they are trying to buy a house, educate kids and buy clothes.

In 1984 legislation said, "You are not locked into until age 40." Now everybody will start worrying about the Human Rights Code. Well, okay, we get around that by using age plus service equals a magic number of 55 or something. All right. Age plus service equals 45. Do not lock everybody in from a young age -- really. Have faith in your citizens. Do not treat your employees and pension plans as if they were mentally incompetent and should be under the care of the public trustee. The old consensus that we worked on for twelve years is dead. The uniform act is dead. Think for yourselves.

Thank you, gentlemen, for listening to me.

Mr. Chairman: Thank you. Any questions? Mr. Kwinter.

Hon. Mr. Kwinter: Mr. Rudd, I just want to get a clarification I am sure you can give me. On your Section 38 when you talk about the two years of membership, I do not quite understand that. Right now, under the provision of the Pension Benefits Act that we are considering, effective January the 1st, '87, we are proposing two years eligibility.

Mr. Rudd: Yes.

Hon. Mr. Kwinter: And then two years for vesting.

Mr. Rudd: Right.

Hon. Mr. Kwinter: Which is four years.

Mr. Rudd: Right.

Hon. Mr. Kwinter: How does that differ from what you are proposing?

Mr. Rudd: Let us say I am an employer that has let people into the pension plan after six months. I have vesting at two years and six months of service. That is expensive. It encourages me to say, "Okay; here on in vesting eligibility is the maximum two years."

If you leave vesting at service four years, you do not have as expensive a benefit and it is the way we used to do things -- not that that matters, I suppose. Two years' membership means that an employer that has a short eligibility period has high costs on turnover -- higher costs on turnover.

Your two years of membership gives some relief on the costs vesting on short-service people. You have got four years if you use the maximum two years' eligibility. Now, why force employers to institute two years' eligibility periods just to get four-year vesting? Why not let them have four-year vesting and let people in at six months or at date of hire often in contributory plans or after a six week probationary period?

In a contributory plan it is going to be very expensive just to deal with the termination of employment benefits. You have got to hire an actuary to give you the 50 per cent costs to do a calculation. Are you with me?

Hon. Mr. Kwinter: Yes.

Mr. Chairman: Any other questions? Mr. Guindon.

Mr. Guindon: I just want to ask you one question. Do you think that this small business -- under 500 or 400 or whatever -- would rather go to a profit-sharing plan than go into a pension plan?

Mr. Rudd: It would be much easier for them. The easiest thing for administrative purposes is a group RRSP. Let us say you have got a five and five money purchase plan. You say, "Okay. We, as the employer, I am going to, in effect, increase your pay by 5 per cent -- it is a taxable benefit -- it will go straight into a group RRSP I am setting up for all of you. Everybody will have your own little RRSP. I provide administrative services at my expense as your employer. Your 5 per cent will now go into there. As a condition of employment you cannot withdraw it as long as you are in my employ, but once you leave, you can do what you want with it -- cash it, pay your taxes, buy a car, put in into a mortgage, keep until you retire, whatever -- but it is your money.

Under this new Act pension money is going to be vested almost immediately anyway. So I could set up my group RRSP. I can have five year eligibility, ten year eligibility, pick whom I want. But in fairness, if I had a pension plan with one or two years eligibility I probably would keep that and just turn it into 10 per cent group RRSP paid as a taxable benefit by me.

I avoid all you gentlemen. I avoid a whole lot of nonsense with the Department of National Revenue. The administrator of the group RRSP just gives the guy receipts. I do not have to report pension adjustments to Ottawa. I do not have to do calculations of the sum of the pension adjustments versus what he actually got which is an unfair calculation also. Life is so simple, just so simple. And it is not all your fault; it is partially what they have done to the taxation system down in Ottawa.

Mr. Guindon: Thank you.

Mr. Chairman: Any other questions? Thank you very much, sir?

Mr. Rudd: Thank you. I welcome the opportunity.

Mr. Bernier: What riding did you run in?

Mr. Rudd: I tried a long shot -- London Centre.

Mr. Chairman: The next presentation is by the United Senior Citizens. Mrs. Joyce King is the President and with her is Mr. Hanmer, a member of the executive.

Ms. King: Good afternoon, ladies and gentlemen. With your permission, I will read an opening statement from our brief and then I will turn it over to Mr. Hanmer who is our pension expert in the United Senior Citizens of Ontario.

Mr. Minister, Mr. Chairman, Committee members, we appreciate --

Mr. Chairman: Excuse me. I do not like not being able to see Joyce there. Would you put that pitcher down, please.

Ms. King: Oh, you want to see me, George?

Mr. Chairman: Yes.

Ms. King: We appreciate this opportunity to present to this committee the views of our members on Bill 170. In large measure, these are based on the policy objectives established at our last annual provincial convention in 1986.

Is it also pertinent to comment on our involvement with issues appertaining to private pension plans. We realize that many of the proposed changes in the legislation will be of greatest consequence to those still in the work force and who will retire in future rather than to those of us who are already retired. At the same time, we are anxious to promote the interests of those already retired whose well-being may be better safeguarded by some of the proposed changes.

We offer our congratulations to the government for including in Bill 170 progressive amendments that take care of deficiencies which have been perpetuated for years in the existing legislation. These include improved vesting and portability, continuance of survivor benefits on remarriage, removal of discrimination on the basis of sex, et cetera. We also wish to express our satisfaction at the moves

currently underway to revamp the Pension Commission of Ontario to better equip it to fulfil its role of protecting pension plan members more effectively.

We wish to make observations on a number of provisions in the Bill, and we will do this by sections in order to facilitate reference. We also offer comment on the indexing of pensions and some related matters that are not at this time included in the legislation. This important issue has figured prominently in our organization's policy objectives for many years.

I would now like to turn the sections and the observations over to Mr. Bert Hanmer. Bert?

Mr. Hanmer: Thank you, Joyce, Mr. Chairman, members, Section 25 - Advisory Committee: The vital interests of persons already retired and receiving benefits under pension plans are often ignored by pension plan administrators and/or those still in the work force. As a consequence, pension recipients frequently feel impotent when questions of vital importance are at stake.

Section 25, admirable as it may be in many ways, offers no protection for retired plan members. To illustrate this situation, we will describe one municipal situation that has been drawn to our attention. Union or unions when negotiating with their employer on pension or other issues repeatedly voted to take action which was mainly concerned with the future status and well-being of those still in the work force but fail to act to improve the pensions of retired pension plan members many of whom were reported to be on very small pre-high inflation incomes.

We therefore ask that a more effective means of protecting the interests of recipients be included in the legislation.

Section 45 - Joint and Survivor Benefits: We have been accutely aware of the inadequacies of existing pension plans in regard to survivor benefits. Again and again, we have learned of widows left without pension income other than public pensions when the husband died.

We therefore welcome Section 45. However, the change takes effect only for those becoming pensioners as of January, 1987. It will substantially reduce future distressful situations but does nothing for those already retired. We realize that there may be a actuarial problems in providing for retroactivity, but nevertheless ask that every possibility be examined which may assist those who are already pension recipients.

Section 53 - Discrimination on the Basis of Sex: Women are in the majority among retired people. In our own

organization, probably 70 per cent or more are women. We have therefore deplored the situation whereby women holding similar positions to men in the same company could end up with significantly lower pensions solely because of their sex. We wish to doubly emphasize our satisfaction with this amendment which will, we trust, remove discrimination on the basis of sex from private pension plans.

Section 55 - Integrated Pension Plans: We welcome the prohibition on the integration of Old Age Security Pension with private pension plans. As Old Age Security is financed through tax revenues, this is entirely proper and should have been in place years ago. We believe that it would be preferable for Canada Pension Plan to be stacked on top of private pensions. We realize, however, that many existing plans may provide differing degrees of integration and that some controls are desirable. We will make further reference to the Canada Section Plan when commenting on the indexing of pensions.

Sections 79 and 80 - Pension Plan Surpluses: Apart from indexing the refund of pension plan surpluses to employers was probably the most discussed pension issue of 1986. Seniors generally, not only those who were retired pension plan members, were angry when employers sought to acquire plan surpluses for their often purposes. This cynical disregard of the rights of participating plan members was deplored. With the provisions of Sections 79 and 80 and the strengthening of the functions of the Ontario Pension Commission, surpluses are likely to be much better safeguarded than in the past.

Surpluses should be properly managed and used solely to improve benefits and to provide contingency resources to meet any future financial deficiencies such as occurred in the early 1970's when some plans had negative rates of return. They should never be made available to the employer for purposes other than those directly related to the pension plan. We regard pension benefits as deferred pay.

The United Senior Citizens proposes that the removal of surpluses be prohibited.

Inflation Protection: Inflation protection is the most contentious issue in pension reform, and despite the dramatic fall in inflation rates compared to the early 1980's it still remains the number one issue. Who knows when the consumer price index may again rise to double or triple its current level.

We seniors have witnessed a calamitous impact which high inflation had on pensions that were not indexed. We believe that all pensions should be fully indexed. We commend the Ministry of Financial Institutions for its support of indexation. We would like to have seen

provisions for full inflation protection in Bill 170. We fear that the external working group deliberating over a long period of time as seems to be likely, may finish up with a complicated formula which will provide less than full indexation.

Those retired persons in receipt of pensions which are not indexed ask that any compulsory indexing apply to them as well as to those who may retire in future. I realize that there have been some difficulties in doing that, but this was the desire of our members in convention dealing with this matter.

Employers put forth a great many arguments supporting the view that they cannot provide inflation protection because of the cost. Often we believe it may be more a question of the will to do so for there are employers who do provide inflation protection on an actuarially-sound basis. Why not more? It will be interesting to learn how many funds with large surpluses provide indexing.

It troubles that many employees in Ontario have no employer pension plan at all. Many are employed in small business especially in the service field. Limited resources are, we realize, a serious impediment to the development of such plans. In such situation, the question of indexing is academic.

We have been advocating for years that the most straightforward way to provide reasonable retirement pensions for this large body of persons would be to expand the Canada Pension Plan. We realize that this is an issue for federal-provincial action, quite apart from Bill 170. However, as it concerns the whole issue of pensions and the indexing of them, it seemed proper to make reference to the matter.

Our long-standing proposal reads in part:

"that there be one national pension plan based on a greatly expanded Canada Pension Plan. It would cover all workers including self-employed persons."

The National Pensioners and Seniors Citizens Federation, with which we are affiliated, put this proposal to the Government of Canada many times but regrettably no consensus was forthcoming. The amendments to the Canada Pension Plan which took effect January 1st, 1987, included no increased coverage.

We are well aware that the views expressed by many economists and others that any increase in benefits would call for commensurate increases in contributions. This would mean substantial additional assets in the hands of the federal government. Perpetuation of the current formula for

the distribution of these assets would mean more loans to the provinces. This, in turn, could reduce funds currently available to the market from private pension plans. Surely in this age of sophisticated mechanisms with the right political will a means could be devised to utilize the additional assets that would benefit the economy as a whole.

Thank you for this opportunity to present our views on some of these items.

Mr. Chairman: Thank you very much. Mr. Kwinter, any questions? Anybody else have a question? We must agree with everything you said then.

Ms. King: Either they totally agree or they totally disagree; I do not know.

Mr. Chairman: Thank you very much.

Ms. King: Thank you for hearing us.

Mr. Chairman: The next presentation is from Mr. Hudyma.

Mr. Hudyma: Ladies and gentlemen, I would like to thank the members here for sitting all afternoon and even this morning on this nice day. As a teacher at the end of the day we have to say something to get the attention of everybody so I am going to start off with Ken Dryden, a lawyer and former hockey player working for the Ontario Youth Commission: "It is a mess. We should be calling for a national commitment to full employment." He is talking about the young people. I am at the other end ready for retirement.

He said: "150,000 young people in this province are unemployed. Government job creation just shuffles unemployment around. The future looks gloomy."

I can say to you at age 61 in my teaching profession and my job, we are shuffling older teachers around to fit in certain categories because of seniority and things like that. We just cannot let them go. They are short of years of their maximum pension. They have changed jobs several time in their career and they are short of years.

I propose two amendments. The suggestions I heard in the earlier presentations cost money. These two do not cost money so everybody should be in favour of these amendments. These are no-cost proposals. The other proposals cost money. Now I want the government to listen to that.

Before I start my presentation, I want to quote from John Hern, Vice-President of Canada Employment and Immigration Advisory Council. He said to those aged between

45 and 64: "They feel they have been betrayed by governments, their unions and employers." I will amplify on these three. I have not been really betrayed but I think we are in a position to undo some of the wrongs that have been done in the past.

Another example in my argument, I spent eleven years after graduation with the Bell Telephone company, one of the richest corporations in Canada, and I have spent the remaining 28 years teaching another large federation and fairly rich in some ways.

This morning's paper mentioned Mr. Richardson as retiring at age 58. He spent three years at the Bell Telephone as an employee. He is going to receive \$4.6 million spread over 20 years as retirement and that does not come out of the pension plan because it would not be legal, but he is getting a nice healthy retirement allowance. That is costing the telephone subscribers quite a bit of money. I will amplify that a little bit later on.

Although I mentioned Bell Telephone in many cases here, my arguments apply for every elderly worker in Ontario. They do not have to have worked for Bell anywhere as long as they changed jobs at no cost to anyone.

Before you say, "Well, we cannot do that; the feds are involved and the income tax and so on" -- So I would just like to read the income tax circular; it will clarify some of the questions raised earlier: "From the federal government employees' pension plans the primary purpose must be to provide pensions to retired employees in the form of life annuities." That is the primary purpose. "It must not be a scheme for diversion of profits or an employees' savings fund with a right of withdrawal of the funds during coverage."

In other words, the employees cannot withdraw. There is no mention of the corporations. That would address some of the questions raised earlier.

The Income Tax Act says pensions are for employees. The Income Tax Act continues in the following: A corporation Ontario and if Teachers' Federation is a corporation, the government is one and so is the Bell. They can negotiate reciprocal agreements. I want to put teeth in the Ontario legislation that makes workable reciprocal agreements. They are not workable; they have not been working for fifty years. I will explain that a little later on.

A workable one would alleviate all the problems you have had in the past ten years. You would not have to have these hearings. If an employee left a firm, the pensions would travel with them.

Failing reciprocal agreements, the second amendment is still no-cost. There are employees at the upper end of the scale who would like to buy years into their fund. We have buy-back for sabbatical leave, education purposes, disability, maternity, active service in the Canadian Armed Forces, Korean war, federal and provincial governments membership, short-term loans -- there is buy-back provisions so there is nothing new there.

Portability arrangements are covered in the federal legislation. Everything is paved for the provincial governments to follow through. You can transfer credits or you can transfer money between pension plans. No cost -- just transfer a credit; that is, "I owe you two years of credit from my firm into your firm." No cash involved. It may be in accounting a hundred years down the road but they could put in IOU's for each other's transfer.

Let me get on with my summary here on page 1. The proposed amendments to the Pension Benefits Act, if implemented, will create jobs at no cost. Last week in my Math department -- I have twelve employees -- last week I told them "Two of you are surplus." That is a nice way of saying, "You are fired." Young graduates, young, full of vitality, teaching Mathematics and Physical Education. They have been told, "You are surplus to my school." This is Scarborough where it is a growing area. The other school boards are worse off.

What am I going to tell these two? Well, I told them, "You are surplus." One of them got a job with Club Med in the Caribbean. Good for her. Canada lost an excellent young lady teacher in Math and Phys Ed. Full of life, doing all extra work around there. She is gone because I am in my job holding on because I have got to be 66 before I get a full pension -- full pension from my last plan.

What happened? Well, the former pension plan kept my credits. They took them and they have got them and I have been fighting for years with the Bell Telephone but it is like a mosquito trying to attack a bull. You just cannot do it.

I specifically represent 25 teachers, former Bell Telephone Employees. There are 300 of us in the teaching profession. I also speak on behalf of 3,000 out of 30,000 secondary school teachers. They are all in the same position -- not necessarily with Bell but other firms. Three thousand. That is 10 per cent of us in the secondary schools.

My school board wants me to retire. They think I have lost my vitality and they want young teachers in but I am going to hold on until I get my maximum pension. I want to get out this year and I will mention how I can do it.

Whatever I say again is applicable to every worker in Ontario. If you are sincere about job creation -- I know this government is -- if you are sincere about lowering the unemployment right -- I know all of you are -- and you are sincere about keeping the expenditure down, we are all in favour; we are all together on this, so let us go for it.

I propose two amendments for the elderly workers and all of us will be elderly if not already. When we are middle-aged we are going to be elderly soon and the young people will be elderly. If I retire, a younger employee will take my job. The younger teacher will get off unemployment insurance, welfare costs, will start paying taxes. I will pay increased taxes. I will buy that car that I always wanted. I will have a couple extra thousand coming down. General Motors will sell more cars. The economy would get the shot in the arm. You may be able to brag Ontario has a zero unemployment rate if you think about these things seriously. Get 10 per cent of the elderly workforce out and allow 10 per cent in.

In a teaching profession there are 3,000 graduating young teachers and only a thousand will find jobs. They are refusing applicants in the universities into the teaching profession. "Do not let them in because there is a surplus of teachers." These young people who should be coming in will not be coming in and they will find other employment.

My first amendment -- no cost -- on page 1. Legislate workable reciprocal agreements. They are not workable. Reciprocal agreements as provided for in the past are not workable as life-long service employees -- these are your corporate, executive officers -- who manage the pension plans are insensitive to the needs of the elderly when one employee, "Good bye." And if you come in late into a second pension plan, "Well, you did not start at the bottom like I did so I am not too happy for you either." I spent all my life here. Why should you come in and claim equality with me? So when you leave jobs three times in your career, no body is really on your side.

The Income Tax Act provides for these things but I cannot see my own Federation and the Ontario government not fully implementing whatever is already there.

Now some elderly workers came from a previous pension plan and the firm went bankrupt or it was another country or what have you. They do not have the transfer. Fine. The second amendment is -- no cost -- not everybody will take advantage of this, but the elderly workers who have accumulated some savings will buy into that last plan -- will buy into the last plan, whatever is determined by the actuary, a certain number of dollars. In my case, if I wanted to buy seven years it is going to cost me \$20,000. I

will pay them the \$20,000 but they will not take my money.

The Ontario Teachers' Federation and the Ontario government, who are part owners of our pension plan, I think seriously would like to do something. However, I do not get enough support from my pension fund managers. I have been in correspondence with them for 10 years.

Did you know if you are a teacher in Ontario if you spent nine years in the Russian army chasing Ukranians and occupying Poland and becoming a teacher in Ontario, you can buy nine years of credit in our fund? I spent eleven years in engineering work for the Bell Telephone in top security services, drew lines right after the World War II intense cold war with Russia. I did a lot of work. I was also three years in the Reserve army. My pension fund managers, they just laugh at me. Okay. That is why I am here.

I think these things can be rectified for everybody in Ontario. If I am having problems and I am supposed to be an intellectual and my Teachers' Federation is filled with university graduates and the government also has their fair share, and we cannot get together think of the other firms. So it has to be legislated. Again, it is a no-cost thing.

Allow the elderly workers -- Put an age limit 60 or 55. Allow them to buy years in their last plan if they can produce something to the effect that, "I have worked seven years as a draftsman in London, England." By the way, that person can buy into my plan but I cannot. I spent eleven years here in Ontario, but if you are out of the province you have a few favours in your area. That is a pension fund manager's problem. Since they do not want to change the pension fund -- they are not managers -- I come to you. Legislation is necessary.

On page 9 I advanced it as my specific amendment. My specific amendment: Section 11 in the Pension Benefits Act as proposed by the Ontario government. It says the two sections are in there but are meaningless. Why put them in there? "The administrator of a pension plan who enters into a reciprocal agreement shall file a certified copy of the agreement." Fine.

Second, they define what a reciprocal transfer is. Good. That is all and I can wait for another fifty years before something is done. So I propose, paragraph 3: "Reciprocal agreements are for the members of both pension plans."

That is in accordance with the Income Tax Act. Pension funds are for employees. Okay. Reciprocal agreements are for employees. They "should be freely negotiated for the benefit of the members." Okay. Great.

Number 4: "If a reciprocal agreement cannot be negotiated --" Okay. OTF, representing 105,000 teachers, approached the Bell Telephone; they wanted a reciprocal agreement for a lot of their teachers. Bell Telephone said, "No." I cannot understand that. Two large corporations in Ontario enjoying the benefits of working in Ontario cannot get together. They both speak the same language -- no language problems. And yet the federal government can negotiate a reciprocal agreement with Jamaica, transferring pension credits with France, United States, Portugal, Italy -- first plan with Italy -- Greece. They speak different languages but in Ontario you cannot do it.

I would ask the Ontario government to make reciprocal agreements workable. However, if two corporations decide, "Okay; let us get together and not do it," I want the power. So paragraph 4 or 5, if they fail to negotiate for some reason or other, I want to ask the Superintendent of Pensions to oversee this -- call two parties in, listen to the arguments. If one corporation claims bankruptcy, prove it, and I will be prepared to accept it. But the Bell Telephone is not anywhere near bankruptcy.

Give the Superintendent some power. If a corporation starts crying, let the Superintendent order the pension plan be deregistered as the ultimate weapon that a superintendent may have towards a pension plan.

Now that does not cost any money. My credits are accumulating at the Bell and just puts some teeth into the fact that I can go to the Bell next week or next month or next year. "Please transfer a few credits; it is only going to cost a few thousand dollars." Or an IOU -- "I owe the Federation ten years of credits and the Federation will some day transfer them back." No cost.

Now, second proposal, second amendment. It is closely aligned. You must understand the teaching federation has a fairly good pension plan. The partnership is with the Ontario government and everything is legislated. It is not negotiated. It is negotiated and legislated, which is ideal; I think that is not bad. There is full disclosure. We know the assets and we know what money comes in and what goes out.

I would ask the amendments on page 10 as you see it there if you are an employee over 60 or 55 -- it does not matter; it is up to you -- allow a buy-back in accordance with the Income Tax Act. It spells it out what you can buy back for it.

Second one; it is for past service. The four steps there are in accordance with the Income Tax Act. There is nothing new there; I am not that innovative. Furthermore,

apart from the Pensions Benefit Act, the Superannuation Act comes under Mr. Nixon, the Treasurer of Ontario, and OTF. Without this committee these two parties can implement a change in the fund.

They have the power to implement buy-back so on page 11 I suggest one little paragraph. The teachers would welcome the change -- the elderly teachers. We could have buy-back for many reasons but I want it extended to:

"the person gained the experience obtained in the period of employment that was accepted by a school board in Ontario as related, industrial, business or teaching --"

When I entered the teaching profession, only two qualified Physics graduated from the universities and I felt I should leave the Bell and maybe become three qualified teachers, which I did. I left my pension credits to do that and I think the young people in Ontario benefited from an excellent or a good background in Physics and Math which my students have had. But I cannot buy those years.

Now, there are my two amendments. I want you to think about them and keep in mind they are job creation and no cost.

I still have some time remaining. On page 2 and subsequently we have the rationales so I would just like to read certain sections rather than all. I know when I read my lessons it is awfully boring so I am not going to read everything. I can going to try to be off-the-cuff here.

Many of us are near or at the end of our working career. We changed jobs several times. We are mobile; we are not slaves to our first pension plan. By the way, the person's pension plan at the Bell age 60 or 20 years service -- I did not want to be there aged 60. I left and a lot of us left. Their turnover rate is 16 per cent at the Bell. Every person that leaves, the pension accrued benefits are there. There is no disclosure to anyone, not even to the shareholders. There is no disclosure in the Bell Telephone pension plan. It is a monopoly. There has got to be full disclosure.

I have asked my federal members of parliament to find out from the Superintendent of Pensions at the Ottawa level what their statements are and I cannot get that access and they cannot get the access. It must be something secret that should not be let out.

Full disclosure is required. The working force was fixed, lacked mobility, could not move, existing pensions plans belonged to life-long services employees. I am not a life-long service employee. I move where the market is or

where I think I fit best or where I feel happy. I do not want to be committed to one job until age 60 and I think all of us feel that way. This is our freedom.

Life-long service employees are the managers. The new legislation must protect all employees -- former. The Senior Citizen petition here -- former employees. The present -- you are looking after the present; you are giving them two-year vesting. That is great. How about those unemployed teachers who will be unemployed for ten years? How are they going to get two-year vesting? Have you thought about that? If you are unemployed for ten years how can you accumulate two-year vesting? There is nothing in it for them but they are so young, they are not organized and they are not even thinking about that.

I talk to my young teachers. "Do you think I should come down there?" "Yes; come down. Tell them you have been fired last week."

Page 3 - Disclosure of Pension Plans: I quote from the Bell Telephone and this is probably typical of half the corporation -- not all.

"In our opinion what is needed is the provision of significant facts regarding pension plans and funds in a concise, easy-to-understand manner. In that regard we do not believe that the plan members need to be provided with lists of assets--"

The Bell employee today does not know where his assets are. I have talked with several of them. They cannot dare ask a question, "What assets do you have in the plan?" They may be demoted or moved out of the city. They live in fear, I think -- those I talked with it.

Actuarial balance sheets -- impossible. Present value of their benefits -- impossible. They "serve no useful purpose to the average worker." Well, the average worker has a lot more education than they think. We can read these statements. "In many cases would not even be understood by the individual." That is from a Bell Telephone quote; I have supporting letters on that.

Both federal and provincial governments should ensure the rules of disclosure are legislated and enforced to avoid pension problems. You would not have this fear I have with my own employer, with my own union, and with my own government. But fortunately in the Ontario government and the OTF I must commend them, there is full disclosure. There is no problem there.

I made petitions to the Pension hearings, provincial commission and the federal commission -- same lines. Very little was done. The most favourable comment is a federal

Liberal government Green Paper. It talks about the elderly workers every third page. We have had a change of government in there and we have two-year vesting and other benefits and some improvements in the Canada Pension Plan. But the elderly worker, I think, is being missed -- that is age 50 to 60.

Page 4, Doug Frith, a Liberal who was in charge of this Pension Commission, still, to this day, says we have got to look after the elderly. Federal income tax allows buy-back. On page 4 I mention these quickly. I have a letter from Michael Wilson dated February 27th, '87, "Go ahead for it. You can buy back any reason so long as you are a member of a former pension plan."

I told him, "I am a member of the Bell Telephone but my own life-long service pension fund manager --" that includes OTF and the government "-- do not see their way to allow this buy-back." I have been fighting with them for ten years, my own pension fund managers. That is why I am here. My three years in the Reserve Army does not count.

Page 5 -- Job creation: It is the responsibility of the corporate sector and governments -- not the employees. We try to create jobs but it is not our job. Nobody will dispute that fact. The corporate structures and the governments -- federal, provincial, municipal -- create jobs. So it is in your hands.

Page 5 -- Reciprocal pension agreements are worthless. The Bell Telephone, being a monopoly, will trade pension credits with other monopolies and these are AT&T, the Bell system, Southern Bell, Florida Bell, Pacific Bell and I say, "How about trading a few credits with the Ontario Teachers' Federation?" "No. You are not affiliated." "Thank you very much."

I want you to do something for all the workers in Ontario have similar problems and these are too powerful groups. If the two powerful groups do not get along, how about the smaller ones? Just put a few words in your legislation; it is not going to cost anything -- workable reciprocal agreements.

You can work all your life, change jobs three times, work for the Bell ten years, work for the secondary school ten years, General Electric ten more and then back to the Bell where there is no bridging and you will have zero or no company pension.

Furthermore, we started work in 1948. We had no RRSP's. We did not have that until the latter part of our life. Do not assume we have huge sheltered savings plans. We started to get involved with these the last ten years. The new young employees do have RRSP's and they can build up

their own little private pension plan. We do not have it.

So when the seniors citizens come in here, they should say, "We do not have an RRSP. We never had one. Do something."

I ask you to do what is morally right and fair to all the people in this province by providing these no-cost measures to relieve some of the problems that exist when older workers retire with a lesser pension than they deserve through no fault of their own. They just want freedom from their first corporation in many cases.

Page 8. Untold, measured benefits: This may be the province which can say in a couple of years, "We have zero unemployment rate. If you are serious about reducing unemployment, get the older teachers out. Get the older workers out. Make it easy for them. And no cost. Reciprocal agreements or buy-back. If they do not want to buy back or have no money, all right, they will stay on and on and on.

If I stay on in teaching to age 67 will my school board say, "You are over age 65, will you go?" I will say, "No. I am still working for my pension." So we will have a little bit of a fight there. Maybe they will let me stay on a few more years. I do not think my students will benefit if they push me around in a wheelchair from class to class or if I start making crazy remarks to my students.

The municipal governments who are begging for money, my Scarborough School Board should realize they can hire a young teacher at half my salary. "Oh, you are going to die anyways. Who cares?" But for five years I can hang in there or longer and they are paying way too much for the service. Get a young teacher in there at no cost. The two I fired last week are not very happy. It reflects in their teaching to their students and for the next three or four months they are depressed.

In the end of my brief I have all kinds of little submissions. They are technical. They explain how the Bell Telephone gives credits of years to their corporate pension fund members. The workers do not get the gifts but the fund managers give credits. "Look, you only work four years as a president, therefore I will give you ten more years for the following reason."

Mr. Richardson worked at Dupont; he has a Dupont pension, four years President of the Bell, \$4 million spent over 20 years. There is money there.

Disclosure. Their financial statement audited by Touche Ross. Two lines on pensions in the financial statement: "In compliance with the United States Financial

Accounting Standards Board's Statement No. 36 we must disclose the following information."

They are doing it for the Americans who have higher standards than we have. That strikes me as something wrong with the Canadian requirements for disclosure. I know in the new legislation there is a paragraph on disclosure. I appreciate that very much. Make sure it is full and complete disclosure. Make sure that I can ask the Bell Telephone full disclosure for the past 30 years so I can continue my arguments with them as to what happened to my credits.

Teachers' Superannuation Fund circular graph. I am not talking about a lot of money. The sliver that you cannot see represents buy-back and transfers in and out of the fund. The rest of the fund is \$10 billion. I am talking about thousands of dollars -- half a million maybe. Our fund is \$10 billion as of today. Half of it was contributed by the teachers and half by the Ontario government.

A very important statistic here. Age 65, 82 per cent have incomes of less than \$15,000 and that is maybe due to Canada Pension. I do not think they have any company pension plans.

A few press clippings here. There is a teacher here, a graduate from the university that could not get into the faculty of education to become a teacher, and he was refused. He had good marks. And Carmelo Barone of Hamilton writes this: "The truth of the reason is the Federation has put a cap on the number of teachers coming in and we influence through the provincial government the number of applicants going into teaching." We want young people in; do not keep them out of the profession.

I have added my brief to the Ontario government, 1978. I am not going to read it; it is the same story. A rather important brief to the CRTC in Ottawa raising pension questions. The Bell was subjected to cross-examination and every area was cross-examined and there was a subsequent roll-back of two months subscriber rates. I feel I had a part in that and I am prepared to do it again and again unless there is some accounting made for my pensions.

In one of the sheets there I list 25 teachers' names and addresses. You can write to them or I will get them to write to you. As far as buy-back is concerned, the Federation and the Ontario government has agreed there is a magical formula that we can buy back and everything is great.

Again, I am going to summarize it in a half a minute here: The two amendments, workable reciprocal agreements

and buy-back are no-cost items. I cannot see any government refusing those.

I thank you very much for this presentation. If you have any questions, I would be more than happy to...

Mr. Chairman: Thank you very much. Mr. Lupusella?

Mr. Lupusella: Thank you, Mr. Chairman. I think at the very beginning of your presentation you made reference to the bilateral pension scheme between Canada, Portugal, Greece and other countries in Europe and I am just wondering what is the relationship between this type of pension with Bill 170. Would you please that explain to me?

Mr. Hudyma: Bill 170 governs the pension arrangements, supervised pensions in Ontario, and the federal government does it for Canada. This being an exporting country outside of Canada, it remains in the jurisdiction of the federal government to do this and they are very receptive. They have done it ten years ago and they are on the right track and they have allowed the immigrants to transport their credits from these countries to our country. In return, an elderly worker here who wants to return to their homeland, the Canada Pension Plan can get transferred over to their homeland and they can retire with dignity at a reasonable pension in either country. That is a federal level jurisdiction and it does not apply particularly to our Bill 190 here.

Mr. Lupusella: Well, with respect, I am very knowledgeable about this type of agreement and in particular with one which has been signed between Canada and Italy. And the question which I would like to raise before you is that as a result of this particular agreement, are you aware that immigrants or Italian immigrants living here in Canada receiving a pension from the Italian government, they are not eligible for the supplementary pension which other people living here in Canada eventually are eligible for because there is no extra income coming from Italy and vice versa?

Mr. Hudyma: That is unfortunate. I would address that probably to the federal government to get the supplementary benefits tacked on, on a reciprocal basis. That is not my area. But if an immigrant comes into teaching and spends ten years of teaching and could show they were part of a pension plan in Italy, as a teacher in Italy, I know the OTF and the Ontario government would allow a certain number of years of buy-back. This teacher would be allowed to buy back so many years and get a fairly good pensions. That is within the provincial government area.

Mr. Lupusella: Well, the reason why I am raising this issue is that I want you to be aware that what it appears to

be -- a very progessive piece of legislation between Canada and Italy -- is a very regressive piece of legislation because a lot of immigrants are losing the supplementary pension, and I want you to take note of that.

Mr. Chairman: Any other questions? Thank you very much, sir.

Mr. Hudyma: Thank you.

Mr. Chairman: The meeting tomorrow will be next door at 228. See you at ten.

The Committee adjourned at at 4:25 p.m.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

PENSION BENEFITS ACT

WEDNESDAY, APRIL 8, 1987

Morning Sitting

STANDING COMMITTEE ON GENERAL GOVERNMENT

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Grande, T. (Oakwood NDP)

Lane, J. G. (Algoma-Manitoulin PC)

Lupusella, A. (Dovercourt L)

McClellan, R. A. (Bellwoods NDP)

McKessock, R. (Grey L)

Offer, S. (Mississauga North L)

Pollock, J. (Hastings-Peterborough PC)

Sheppard, H. N. (Northumberland PC)

Substitution:

Bernier, L. (Kenora PC) for Mr. Sheppard

Clerk: Deller, D.

Witnesses:

From Northern Telecom Canada Ltd.:

Bovey, I., Assistant Vice-President, Human Resources Administration

Pelletier, J., Past Chairman, Pension Standards Committee, Canadian Chamber of
Commerce

From the Joint Committee of Graphic Arts Multi-Employer Pension Trustees:

Mitchell, M., Legal Counsel

Paquette, L., International Vice-President, Graphic Communications
International Union

Smith, F., Executive Director, Council of Printing Industries of Canada

From the National Committee for Independent Canadian Unions, Hamilton Branch:

Ellis, R., Chairman

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday, April 8, 1987

The Committee met at 10:05 a.m. in room 228.

CONSIDERATION OF BILL 170, AN ACT TO REVISE THE
PENSION BENEFITS ACT
(Continued)

Mr. Chairman: We will continue with our consideration of Bill 170.

We have at the front with us a Mr. Steve Offer who is the Parliamentary Assistant to the Minister, and we will presume that he is representing the Liberal party this morning, which gives us a quorum.

We will proceed to hear from Joanne Henderson, from Mr. Pelletier and Mr. Bovey, Northern Telecom Canada Limited.

Mr. Bovey: Thank you. My name is Ian Bovey, I am Assistant Vice-President of the Human Resources Administration with Northern Telecom Canada. I have been involved in the pension industry for more than 25 years, both in the service industry with the Royal Trust and First National City Bank of New York, and in manufacturing with Domtar, and now with Northern Telecom.

I am currently on the Advisory Board of the Conference Board's Compensation Research Centre, a member of the Canadian Chamber of Commerce, Health and Welfare Committee, and a past President of the Canadian Pension Conference. I have been directly involved in pension reform in a number of capacities.

With me is Joanne Henderson, who is Manager of Compensation Development for Northern Telecom Canada. She has had more than ten years of experience in benefits, design and administration.

Also representing our actuarial consulting firm, Jacques Pelletier, who is managing partner of the Sobeco group. He has been active in various committees in the Canadian Institute of Actuaries. He is past Chairman of the Pension Standards Committee, and is currently Vice-Chairman Committee on Liaison with Governments on pension matters, and Chairman of the of the Health and Welfare Committee, Canadian Chamber of Commerce.

In the half hour allotted it will be impossible to go through our whole submission and leave time for questions.

So I would like to take you through only the highlights of the earlier sections, but would like to read with you the sections dealing specifically with Bill 170, emphasizing our concerns with respect to mandatory indexing. We are offering some constructive options which could lead to a somewhat less costly solution.

Our principle reason for appearing before you is to speak on behalf of one major employer in the manufacturing sector, which like many others, is locked in combat with very aggressive competition. Any additional cost exposure strains our ability to compete effectively.

Bill 170 with its significant cost implications, threatens our continuing ability to maintain employment levels and standards of benefits which both employees and retirees have traditionally enjoyed.

The earlier pages of our submission will give you the information you need with which to judge whether it is appropriate to implement Bill 170 in its proposed form to be applicable to a company like Northern Telecom.

In our view, the evidence provided is hardly indicative of a plan sponsor that deserves to be placed in a position of inheriting even greater costs.

As noted on page 3, we have long provided access to non-contributory and very competitive defined benefit pension plans, since 1920 in fact.

As noted on page 5, we have provided significant protection and against inflation to our retirees. 45 per cent average increase to those receiving adjustments.

We believe the focus of pension reform has so shifted from the need to provide greater coverage, that it will severely upset the balance between the needs and rights of employees and the employer's capacity to pay.

I would ask you to turn with me to page 7 where there is a heading "General Reaction to Bill 170".

Northern Telecom has already made a number of representations to the Government of Ontario regarding various aspects of pension reform. For example, we have indicated concern regarding certain aspects of early vesting, the use of surplus, mandatory indexing, the regulation of pension fund investments and Section 54 of Bill 170.

I would like to start with some items of support.

In principle we support the following: Some adjustments to the minimum quality of standards for private

sector pension plans and their administration.

A move to earlier vesting, though the drastic reduction to two years will cost some significant cost and administration consequences. While a two year waiting period will moderate the cost somewhat, we are discouraged that additional costs will be incurred for employees who voluntarily terminate after a considerable investment on the part of the company in their training.

Employees who lose their jobs through no fault of their own are already well protected through our income security plans and continuing benefit coverage.

The next item, the improvement and affordability provisions.

The right of spouses to share in the value of pension accruals in the event of marital breakdown, but not other beneficiaries or estates.

Easier access to early retirement on an actuarially reduced basis.

Improved disclosure requirements, though we have some concerns regarding the degree of specificity that is appropriate and the additional complexity this places on the plan sponsor.

The right of regular part-time employees to have access to some form of retirement provision.

We are concerned, however, that a dollar threshold is proposed rather than hours worked. Using a percentage of the yearly maximum pensionable earnings would mean that higher paid part-time employees could acquire pension rights with relatively little time worked. The hours worked approach is used in the U.S. I think it is a thousand dollars.

We have distinct reservations with respect to the application of the following: The longer term impact of legislation which results in increased cost and complexity of administration, it could discourage creation of new pension plans, delay any improvement in existing plans, possibly lead to a trend of plan sponsors transferring the risk to employees through conversion, to defined contribution plans which will not deliver the same degree of adequacy.

Improved coverage. The original thrust of pension reform seems to have been forgotten.

The provision of pre-retirement death benefits without due regard to the more effective mechanisms available

through group insurance and survivor income plans, and the right of employee representation in its present unclear form. At the very least it should be acknowledged that there could be distinctions drawn between voluntarily created non-contributory plans and those that require employee contributions. And of great importance we believe the Bill should acknowledge that collective bargaining automatically creates employee representation.

We are strongly opposed to the following: Section 54 which would force plan sponsors to accept either increased costs or to reduce benefits for employees with dependent spouses, all in the name of non-discrimination.

The practice of some plan sponsors to provide spousal benefits through a pension plan has arisen in recognition of a real need. The guarantee of equal value regardless of need seems inappropriate given the clear acceptance of public policy of basing benefits on the degree of need such as that written into the Workers' Compensation Act, the Canada Pension Plan, the Income Tax Act, et cetera. Perhaps another law, the Ontario Family Reform Act should be the prime instrument for ensuring equity.

Next item, the possibility that an actuarially determined surplus in non-contributory defined plans such as ours, where the risk is also entirely ours, and with penalties in the event of a deficit arriving, will not be available to plan sponsors for use other than for indexation. We fully recognize the sensitivity of this issue, but trust that due consideration will be given to ensuring that surplus can be used by plan sponsors for purposes other than for direct indexation. For example, a reduction in employer contributions, thus freeing up funds for investment in the business and creation or preservation of jobs; an improvement in benefits.

Next item, permitting funding of ad hoc increases for retirees such as we have done.

I would like a brief comment from our consulting actuary, Mr. Pelletier, on this point.

Mr. Pelletier: Well, I think as you may have noticed, as Ian mentioned, there is about \$8-million which is currently paid in post retirement adjustments to current northern retirees. This has all been funded over the past few years by reason of lower contributions being required in the pension plan. That situation, as mentioned, creates the possibility that that deficits could arise in the pension plan, and that is exactly the situation we have now, and the employer is going to have to make additional contributions to make up for these unfunded liabilities.

Mr. Bovey: In other words, surpluses are not a

permanent condition.

Funding the cost of retiree health care is another item. This is a largely unrecognized long-term liability that will have to be faced more appropriately, and the existence of surplus is certainly going to help take care of that burgeoning liability.

Now, in reviewing those four items, each in their way can be recognized as a legitimate protection against inflation and as a means by which plan sponsors can do a far better job of addressing today's needs than would indexing of future pension accruals.

This leads us to focal point of the submission, we are extremely concerned with the proposal for mandatory indexing.

We put forward the following points with respect to the economic impact on plan sponsors. Plan sponsors will incur substantial additional cost.

As a national employer, Northern Telecom faces for future accruals only and in addition to 8.1 million we are already spending on post retirement adjustments, incremental annual cost estimated to be a minimum of \$10-million per annum, or enough to pay the salaries of 300 people. This creates additional pressure at a time when we are facing increased worldwide competition in the marketplace.

The cost of future accruals is only one aspect. How are our plan sponsors going to be able to justify two classes of retirees, those with inflation protection and those without?

Northern Telecom, as noted, will not be subject to heavy cost increases with respect to past service as most because of our long history of ad hoc adjustments. However, we share the private sectors' concern, particularly given the unpredictable and extremely volatile nature of inflation. The cyclical character of manufacturing only serves to increase our concern.

Mandatory indexing in its usually proposed form, i.e., a percentage of the consumer price index increase, gives the most to those that have the highest current income. It discourages plan sponsors from focusing adjustments on those with the greatest need, such as those who retire prior to significant plan design improvements.

The following points are with respect to a more general economic impact.

The combination of Canada Pension Plan availability at age 60, easier access to private plan early retirement and

mandatory indexing, will contribute to a general trend towards earlier retirement, proving very costly for Canada's economy.

Early retirement, while perhaps opening up some job opportunities for the unemployed new entrants into the work force, tends to be treated very often as attrition by most of the private sector. The point is that the average age of retirement is a very significant cost assumption in the funding of pension plans, and a trend downwards will cause a substantial drain on overall financial resources. Some western nations, our major trading partner, the U.S. included, are working to reverse this trend.

Mandatory indexing could lead many plan members to save less for their retirement, and this situation is exacerbated by recent income tax changes affecting members of pension plans.

An alternative solution. Northern Telecom fully recognizes the social attractiveness of Ontario's proposed legislation and, as stated, supports a number of its objectives. However, the corporation firmly believes indexing is particularly inappropriate at this time.

We are concerned that it imposes the greatest additional burden on the good corporate citizen.

While Northern Telecom has been doing the right thing, it has always been our own decision based on business conditions and has never been pre-funded.

Accordingly, and perhaps to encourage continued growth in the private sector, Northern Telecom suggests that plan sponsors, with plans which meet certain minimum standards, be granted an exemption from the requirement to index. For example, it might be appropriate to exempt non-contributory defined benefit plans which provide a benefit of say one per cent of final average earnings in excess of the average industrial wage. And in the case of flat benefit plans an equivalent could be determined. And defined contribution plans, an exemption might apply if the plan sponsor's contribution was at least say four to five per cent of pensionable earnings in excess of the average industrial wage.

The concept of in excess of the average industrial wage relates to the fact that old age security and CPP provide a combined pension representing a significant replacement ratio, and both are fully indexed to the CPI as it is now.

A further form of exemption could be granted based on a proven track record of ad hoc adjustments, which the private sector clearly prefers because of the cost and focus

flexibility this method provides. For example, consideration could be given to a minimum standard such as tri-annual adjustments after age 65 in an amount not less than two per cent compounded per annum.

It should be noted that the Federal Government appears to be leaning towards the latter approach to the extent that we have a number of employees, our installers, who are subject to federal regulation because of their occupation. This symmetry is important to us.

Recommendations to minimize the cost impact.

The Friedland Commission, to which we shall also be directing these comments, is primarily concerned with developing the methodology to be applied in the event mandatory indexing is adopted.

We understand that the Commission's mandate permits it to determine ways to minimize the cost impact of the legislation, while ensuring its spirit is implemented.

We will bring to their attention the following considerations which could certainly help obviate the degree of concern shared by the private sector.

Inflation protection could simply be the prime option available at retirement. This case, the employee would then share in the cost of the pension.

Those who wish a larger replacement value at retirement could choose to protect themselves against inflation through personal savings while employed. In effect, this is the current system, encouraged as it is by income tax provisions.

Required inflation protection could be a specific and reasonable percentage such as two per cent. If expressed as a percentage of the CPI, there should be a cap to ensure that plan sponsors are protected in the event of rapid inflation. Such a reasonable CPI cap might be five per cent.

The regulations should adequately take into account the inflation protection already provided through Old Age Security, Canada Pension Plan, and many other public and para-public programs such as OHIP.

Mandatory indexing should start no earlier than age 66, this is a very fundamental point, i.e., one year after the normal retirement age assumed by public policy, Old Age Security and Canada Pension Plan, and the norm traditionally adopted by plan sponsors.

If effective from age of retirement, this would

substantially increase costs, (a), by encouraging early retirement, and it would be particularly costly for those plan sponsors with a relatively low current average age of retirement due to the type of occupation of its employees, the effects of technological change, downsizing, et cetera.

A case could also be made to have indexing perhaps on a more generous bases, for example, 50 per cent of the CPI, to commence only from age 71. This latter age has some substance in that it is the age at which Registered Retirement Savings Plans must be converted to some form of annuity.

The regulations could also take into consideration the flexibility that would be inherent in more generous funding rules. Pre-funding of mandatory indexing could then be made more palatable.

The following consideration is representative to the regulations as they effect collective bargaining. Under our existing laws, all aspects of the employment relationship may be the subject of negotiation. We are concerned that organized labour will see this as a new base from which to bargain, and that employers will find it impossible to gain any credit for the significant cost increase imposed.

Accordingly, it should be absolutely clear that there be no applicability of any provisions of Bill 170 until expiry of the current collective agreement, and that indexing will apply only to future pension accruals.

Conclusion: Bill 170 will, in our minds, create substantial and largely uncertain additional liabilities for those plan sponsors who have voluntarily provided generous pension plans. Additional expense, unilaterally imposed, is difficult to assimilate in the face of Canada's weakening competitive position in the manufacturing sector.

Bill 170 cannot be looked at in isolation of other potentially costly legislation that is in the discussion stages, for example, unemployment insurance.

The private sector needs to be able to depend on public policy to enable it to be competitive.

Accordingly, we recommend that this Government give every possible consideration to going no further than the consensus agreement reached between the provinces and the federal government. This, as you know, did not include mandatory indexing.

Thank you very much. We are open for questions.

Mr. Chairman: Mr. McClellan?

Mr. McClellan: Thank you, Mr. Chairman.

Thank you for the very thorough presentation.

I was interested to know how many actuarial evaluations your pension plan has had, let us say, since 1977?

Mr. Bovey: How many?

Mr. McClellan: How many.

Mr. Bovey: Well, you could confirm this, but we have tended to do them pretty well annually; is that right?

Mr. Pelletier: Yes. Each year annual evaluations are conducted of the northern plans. They are not all filed with the Pension Commission, but I would say the majority have been filed.

Mr. McClellan: Have you been in a surplus position in any year during the last ten years?

Mr. Pelletier: Over the last three/four years, yes, there have been significant surplus positions.

Mr. McClellan: I am sure you don't have all the details with you, but can you describe for the Committee in as much detail as you can recall at least, the number of times that the fund was in a surplus position and the amounts of the relative to the value of the assets of the fund?

Mr. Pelletier: Yes. Well, I think we have to go back to about the last -- about three years where really surpluses began to arise in the pension plan, because for a large number of years there have been contributions to fund unfunded liabilities of a fairly sizable amount.

I think over the last three years there have been surpluses that were initially fairly small, but have arisen to approximately \$20-million I think in the last year.

Mr. Bovey: It was over that time frame that we made the conscious decision to use the existence of such surpluses to reduce our contributions and to transfer like amounts of money into a new plan which was to fund the ad hoc increases we had made to retirees.

Mr. McClellan: So you use the surplus for a combination of benefit enhancement to retired members and to reduce your own service contribution?

Mr. Bovey: Yes.

Mr. McClellan: What was the split?

Mr. Bovey: I don't know.

Mr. McClellan: You do not have that information?

Mr. Pelletier: I am sorry?

Mr. McClellan: Well, if you were taking a surplus, I do not know what the total amount of the surplus was, whether it was larger than \$20-million or whether that is just a snapshot at a point in time. Taking the \$20-million surplus, how would you have divided that between the two uses of what the Commission refers to as a service contribution holiday and benefit enhancement to your members?

Mr. Pelletier: There has been one use. There have been many uses of surpluses over the years than benefit enhancements, because benefits in Northern Telecom plans have been increased consistently from a number of years. So there have been a number of instances where experience gains from investment earnings have been used in part to offset some benefit gains. So we are going to almost, not each year, but almost every two years there have been improvements to the pension plans of Northern Telecom.

In the last few years there have been even more significant surpluses. I would say in total probably in the neighbourhood of \$40-million.

There was at the same time an unfunded and certainly unrecognized liability of the plan, which was these commitments that Northern Telecom -- not these commitments, but these payments that Northern Telecom had been making to retirees across the board, to all retirees of Northern Telecom, which amounted to about \$7-million, and are now \$8-million.

So at the time when some relief could be taken, due to surpluses in the pension plan, funds were used by the corporation, not from the pension plan, but contributions were used to fund these amounts thereby increasing the security of the benefits to the retirees.

Mr. McClellan: Thank you. For the current year were you required to make a service contribution or did you take that from the surplus account?

Mr. Pelletier: In 1986 there is a current service contribution and there are for some of the plans of Northern Telecom, relatively small amounts, but amounts that are required to fund unfunded liabilities.

Mr. Bovey: '87.

Mr. Pelletier: There will be in '87 and there were in '86 as well.

Mr. McClellan: There were about, as I understand it, about three years out of the last ten where you were able to draw from surplus accounts to offset annual service contributions.

Mr. Bovey: I just want it understood clearly that we did not draw from surplus as such. Nothing was removed from the pension plan as such.

Mr. McClellan: I understand.

Mr. Pelletier: Surplus accounts are monies that would not have been put there if I had --

Mr. McClellan: It is my clumsy way of describing the process. The Commission calls it a contribution holiday.

Mr. Bovey: That is right.

Mr. McClellan: One other question, you had raised the issue of two year vesting. I assume from your report, you do support two year vesting since it is part of the national consensus, and you appear to be supporting the national consensus, but you had raised questions about costs, and that is something that I have never been able to understand. If somebody is a member of a pension plan under the current vesting rules of 10 and 45 --

Mr. Bovey: 10 in our case, not 45.

Mr. McClellan: I see, right.

Mr. Bovey: The real reason for cost implications is our pattern of turnover. Our turnover is substantially concentrated in a period after two years of service. So there is substantial administration, plus whatever cost is associated with those relatively modest accruals. Whatever it is, it is additional cost and we do not face that.

Mr. McClellan: Thank you. How do you work out the actuarial? I am trying to get some understanding of how turnover is folded into the actuarial formula as you are trying to determine full funding, because everybody I assume who is a member of the plan is paying their contributions, and you are paying your share of the pension on their behalf. So that the money in one respect is in the plan and it is fully funded and yet there are actuarial assumptions that take into account what the turnover rate is going to be. And so you reduce your costs on the basis of an anticipation that a certain number of employees are going to lose the employer's share of the pension contribution.

Mr. Pelletier: That is a non-contributory pension plan. So there are no employee contributions.

Mr. McClellan: Right. Thank you.

Mr. Pelletier: In the evaluation, of course, there is a discounting factor for the fact that the employee may not be still there after the ten years of service, and, therefore, in anticipation of that possibility there is a reduction in the cost, of course.

Now, if all of a sudden we have to grant vesting, I mean, all these credits disappear and therefore there is an extra cost.

Mr. McClellan: Right. But when somebody sits down, a member of the bargaining unit, whose Union is bargaining on their behalf, I assume that the pension contribution, when negotiating time comes around, is part of the wage package; am I wrong?

Mr. Bovey: Yes, you are wrong. We do negotiate benefits as such, not any costs. We promise to deliver a certain level of benefits, and that is exclusively what is negotiated. It obviously is part of our overall cost consideration.

Mr. McClellan: It is part of the overall pie that is on the table.

Mr. Bovey: But you do not see any reference to cost as such in any collective labour agreement language. You see only reference to, we will pay X dollars per month per year of service upon your retirement meeting such-and-such a condition.

Mr. McClellan: Right. Would you disagree with the proposition that if you weren't paying that amount of money in cost in the form of the pension contribution, you would be paying it as a form of wage, take home pay?

Mr. Bovey: Yes. But if it was in the form of pensions it would probably be in the form of a defined contribution plan, and both are -- the representatives of our employees and ourselves do not believe that it delivers as good a long-term pension.

Mr. McClellan: So yours is a...?

Mr. Bovey: Defined benefit.

Mr. McClellan: Defined benefit.

Mr. Pelletier: The situation is that in a defined benefit plan there is no exact knowledge of what the cost

is. I mean, the cost would be known when people retire and receive their benefits.

There is certainly cost. It is the precise determination that is not known, and therefore there is no commitment towards the cost, but towards the delivery of the benefits.

Mr. McClellan: One more question, it is more of a comment.

My understanding of the cost impact of reduced vesting is in fact a loss of a cost savings to you. You are making the payments on behalf of your employees on the basis of ten year vesting, but you are making actuarial assumptions about your turnover rate. In fact, you are paying the money on behalf of employees and then taking it back under the ten year rule. Well, at least you would not be able to any longer. You are going to have to revise your actuarial formula to take into account the fact that you are no longer able to take back money from your employees.

Mr. Pelletier: But the fact is, Mr. McClellan, that if there is two year vesting, there will be more benefits being disbursed and if there are more benefits being dispursed, there is going to be a greater cost. That is what it boils down to, and it is what we meant by additional contributions.

Mr. McClellan: Thank you.

Mr. Chairman: Mr. Lane?

Mr. Lane: Thank you, Mr. Chairman.

I guess my question was partially answered with the former speaker.

On page 7 you talk about your concern about earlier vesting. I do not see any place where you are suggesting how to resolve your concern.

Mr. Bovey: I think we have accepted that it is inevitable, and I think we have determined that at least the fact that there is provision for a two year waiting period before plan entry mitigates the cost increase to some significant extent and that is something that we can lean on to assist in overcoming the problem.

Mr. Lane: In other words, you do not like it too well, but you are going to live with it.

Mr. Bovey: Exactly.

Mr. Lane: On page 8 you say you are concerned about

improved disclosure requirements. Do you want to enlarge on that at all?

Mr. Bovey: Well, it is really only a question of what ultimately become the requirements as opposed to concern about -- we are essentially saying that we support the disclosure requirements. We are simply concerned about the measure. There is an awful lot of complexity in understanding pension and all the peripherals. I think we have just had an example of how confusing it can be.

So we want to make sure that whatever comes out in terms of regulation is something which is not to be too onerous and which is understandable, and which is going to be something which has real meaning to the plan members.

Mr. Lane: In other words, it should be in layman's language.

Mr. Bovey: Yes.

Mr. Pelletier: Well, I think it may go just slightly beyond that. In the required disclosure, there are requirements to disclose to people that Northern Telecom may not even know. There is a potential for more than one spouse, for example, in this legislation.

To read the proposed regulations, there is a very extensive number of people that you have to provide information to, and in some cases Northern Telecom may not know.

Mr. Lane: On the same page, I just wonder if you want to enlarge on your remark about part-time employees?

Mr. Bovey: Well, as indicated in one of the appendices, our average rates are significant. When you start translating what part-time employment would require in the number of months at some of these rates, we are talking about people potentially picking up credited pensionable service in very short periods of time. I could visualize as few as three months.

I do not think that the plan was evolved on the basis of looking after people who would be working part-time, not have an ongoing permanent link with a company, necessarily, picking up pension credits for as few as perhaps six months service in two years, and maybe never working again. It is that kind of a concern.

Mr. Lane: On page 9 you say you are strongly opposed to Section 54. Again, is there anything further other than what you have in your brief that you would like to tell us?

Mr. Bovey: I think that we have reflected our

concerns in a letter to Mr. Kwinter, which he has acknowledged. I do not think we need to dwell on it.

Mr. Lane: So the information is available to us.

On page 12, I guess you are saying that early retirement is not necessarily an opening for new employees to get jobs. It is quite often taken up by attrition and it is probably a false hope that new jobs are going to be available.

Mr. Bovey: Certainly our experience and the experience of many people we have talked to, has been that it tends to be used as an opportunity to soften the effect of downsizing, yes.

Mr. Lane: Okay. Thank you very much.

Mr. Chairman: Mr. Lupusella?

Mr. Lupusella: Thank you, Mr. Chairman.

Could you please tell me if you have such figure, how much people in the Province of Ontario are covered by private plan, and if you would use a ratio from one to one hundred, what kind of a percentage of these people have such a plan?

Mr. Bovey: I skipped over the reading of the early part of our submission. I think you will find a specific reference to a number of employees in Ontario on page 2, where we have 14,000 employees working in ten Ontario communities, all of whom, exempt those who are clearly part-time or term employees, are covered by our plans.

Mr. Lupusella: I had an opportunity to read in fact page 2, and I understood that the figure given to us is based on the number of employees working for your corporation. My question is, if you have any figure which will affect the total Liberal force in Ontario in the private sector, how much people have private pensions?

Mr. Bovey: In Ontario?

Mr. Lupusella: Yes.

Mr. Bovey: All companies, I am sorry.

I am told that there is, depending on how you look at it, 50 per cent or thereabouts, are covered by private plans. That would take into account the fact that some people are working for companies where there are no plans, there are some who are in the waiting period. That kind of thing. But 50 per cent I think is generally accepted as a reasonable coverage figure.

Mr. Lupusella: Do you have the figure of people that are not covered at all in the private sector by private plans?

Mr. Bovey: Well, I would assume it is somewhat less than the remaining 50 per cent because there would be some companies who would have alternative forms perhaps, such as profit sharing plans, deferred profit sharing plans or group registered retirement savings plans. So I do not know the answer, but it would be less than the remaining 50.

Mr. Lupusella: Thank you very much.

Mr. Chairman: Mr. Guindon?

Mr. Guindon: Thank you, Mr. Chairman.

Among all the people you employ in ten provinces you said, or it is right across Canada?

Mr. Bovey: Yes, we have people in virtually every province, yes, in every province now.

Mr. Guindon: What effect does it have on the administration of a pension plan like you have if Ontario goes ahead with Bill 170?

Mr. Bovey: I suspect up to this point we have administered on the basis of legislation as it emerges. As a consequence, we do have some dissimilarities even now because Manitoba has some significant differences.

Ms. Henderson: And Saskatchewan and Alberta.

Mr. Bovey: However, obviously if Ontario were to move ahead, I think we would be hard-pressed to have significantly different approaches for employees of the same corporation, and would probably have to strongly consider applying whatever, everywhere. That is why I have rolled up the figure to talk about total corporation in some of the costs.

Mr. Guindon: That is in your case. What about the case of maybe some other company who could not maybe afford all --

Mr. Bovey: I did not suggest we could afford it. I am suggesting we cannot afford it.

Mr. Guindon: What I really want to ask you, would it be used by some companies to maybe hire employees from another province in Ontario?

Mr. Bovey: You mean invest in other provinces with less expensive legislation? I can't comment on that. I

think there are many other factors that go into that determination. This would not be the most important.

Mr. Guindon: Thank you.

Mr. Chairman: Any other questions?

Thank you very much for your presentation.

Although the next presentation is not slated until 11:00, I think we can proceed with it, if the gentlemen agree.

We have a presentation from the Joint Committee of Graphic Arts Multi-Employer Pension Trustees. We have with us Mr. Mitchell, Mr. Smith, and Mr. Paquette. I am not sure which is which so maybe one of you would introduce the three of you.

Mr. Mitchell: My name is Mike Mitchell, I am counsel for the Committee. On my left is Mr. Paquette, who is the International Vice-President of the Graphic Communications International Union. On my right is Mr. Smith who is the Executive Director of the Council of Printing Industries of Canada.

The purpose of the representations this morning is basically to address the specific problems of multi-employer plans in terms of this legislation.

The Joint Committee is a rather unique institution. It was formed essentially for the purpose of putting forward representations regarding pension reform. It represents the joint view of the trustees of these pension plans, which basically cover the printing industry of Canada, and they are the joint view of all of the trustees. And the Board of Trustees is composed of an equal number of Union representatives on the one hand and an equal number of employer representatives on the other.

So that the views that I am putting forward do not represent the views of the Union side or management side, but they represent the joint view of both sides who jointly have the responsibility for administering these plans.

It is indicated in the representations on the first page that there are approximately \$200-million dollars in assets in these plans. I am advised this morning that is an old figure and not correct. The new figure that is correct is, it is approximately \$325-million in assets.

There are thousands of employees in the printing industry across Canada, perhaps approximately 12,000 involving some 500 employers. Some of those employers are of a large size. Many of them are very small.

Essentially these plans operate across Canada. Two of them operate in fact across North America. But the asset value that I have given you is the asset value of the funds in Canada.

This is the first time Bill 170 -- is effectively the first time that multi-employer plans are going to be regulated by legislation. The existing legislation did not purport to deal with them in any substantial way or in any effective way. Contrary, for example, to the experience of the Americans who have been regulating multi-employer plans through their pension legislation for many years.

Accordingly, since this is the first time in Canada, really, that multi-employer plans are going to be regulated, there are bound to be some technical areas which need to be addressed. The Joint Committee has been trying to address those issues for some time, and we are here before the Committee to attempt to bring to your attention what we consider to be some very important omissions in Bill 170.

Sprinkled throughout Bill 170, and all of its parts as you go through it, are specific references to multi-employer plans and specific exemptions for multi-employer plans because the requirements that apply to single employer plans, and it really does not matter whether they are very large or very small, simply have no application very often to multi-employer plans.

I should tell you multi-employer plans operate, of course, not only the printing industry, but they are very, very important in the construction industry, in the garment industry, in the food industry and in others across Canada. But, of course, we are particularly concerned with their impact on the plans in the printing industry.

These plans are the product of collective bargaining, and sophisticated collective bargaining in the sense that they are not the product of an individual agreement made between necessarily just an individual employer, but generally between a large employer association on the one hand and trade unions on the other, with smaller employers generally picking up that arrangement and being bound to that agreement.

Some of the plans are self-administered, certainly the large ones are. The smaller ones may be administered by a trust company, or something of that kind.

Basically the contribution rates in multi-employer plans are set through collective bargaining. They are set in whatever the cycle of collective bargaining is, whether it is annual or every two years, or every three years, or whatnot, and the contributions are fixed. Generally speaking, in most of these plans they are not contributory,

the employees do not contribute. There is a fixed, defined contribution that comes from the employer.

The most important aspect of these plans is that they are jointly administered, that there is an equal number of union representatives and employer representatives on the Board of Trustees, and they have the responsibility jointly for administering the plans.

Now, we have here in this submission really a number of sometimes quite technical points, and I am not going to spend a lot of time dealing with them. I am going to try to highlight most of the problems. I want to save some time certainly at the end of the submission, and perhaps you could just clarify. We have to, approximately, 11:30, do we?

Mr. Chairman: You could prolong it that long if you like.

Mr. Mitchell: We will try to move along. I certainly want to leave some time at the end to deal with the question of indexing which, from the point view of the Joint Committee, is one of the most pressing issues to be addressed.

On page 4 of this written submission there is set out there the definitions of multi-employer plans from the definition section of Bill 170. Then there is a further section 8(1)(e) on that page which refers to the fact that if a multi-employer plan is established pursuant to a collective agreement, the Board of Trustees establishing the plan must be at least half representatives of the Union and half representatives of the employer.

There is no problem with that, except that it may be technically incorrect. It may be, and argue it is actually, that these are not technically plans "established pursuant to a collective agreement". They are plans really established pursuant to a trust agreement, entered into by an employer's association, a trade union and individual trustees when they were originally set up.

Sometimes the collective agreements bind employers to the plans, but technically not in every case are they "plans established pursuant to a collective agreement". So we are a little worried by the terminology.

We have suggested basically on page 5 different language for Section 8(1)(e) which would reference it simply to the employer's obligation to contribute to a plan being in a collective agreement, and not the plan itself being established by a collective agreement.

Now, this is technical, but it is important because if

all the exemptions to multi-employer plans of our kind are not properly defined in the legislation, they are not going to apply from a legal point of view, and so it is quite important that we get the definition section and the reference sections and the exemption sections phrased properly.

On page 6 we come to the problem of a question of vesting, and we have set out the provisions there of Bill 170 which deal with vesting. The Joint Committee has no problem with two year vesting. That is not the problem.

The problem is that the way the definition has been set out in the Bill does not take account of the special problems of multi-employer plans, which are as follows. The Bill defines in Section 38 that you have effectively two year vesting when you are a member of the plan for a continuous period of 24 months. Now, in a single employer plan that is not a problem. You are employed and you are a continuous member of the plan for 24 months. Your employment is exactly the same as your membership in the plan.

But it is not true with multi-employer plans. Construction is the easiest example to understand. You go from job to job, you terminate your employment with a particular employer and you move to another employer. And same thing happens quite often in the printing industry. So you are not employed and working all the time that you are a member of the plan. Your membership in the plan does not stop just because you stop working for one employer.

That is one of the major purposes of these plans, for example, in construction and printing. So it provides for continuity of pension contributions and accumulation of pension benefits through a system because people are working for a variety of employers.

Now, the effect that this will have if you just leave it this way, is that someone who works, for example, for a month in two years will have been a member of a plan for a continuous period of two years and so will be vested for that month. Now, that represents a special problem for multi-employer plans and it does not make a lot of sense.

What the legislation has done in another section, in Section 32, is to say it does recognize that multi-employer plans have a special problem. What you say in Section 32 of Bill 170 is that a multi-employer plan can set as a condition precedent to membership in the plan a certain earnings requirement. For example, you say in Section 32 that you would have to earn, I think it is, 35 per cent of the YMPE, years maximum pension earnings in each of two years. Well, that is all right, but our plans do not do that. We do not want to do it. We do not want to have to

say to somebody that you cannot be a member of our plans until you have earned a certain amount.

What we would rather do is let them be members of the plan right from the beginning and only vest them if they work a certain amount; for example, a thousand hours in each of two consecutive years.

So we do not want to be forced to be put in the position of bringing in these membership requirements, which is the position we are going to be forced into, perhaps effectively, if the Bill is passed in this way.

We would much prefer, certainly if we do not have a membership requirement, to be able to say, you have to work for a certain minimum period in each of two years, and we think that should be about a thousand hours or some equivalent amount set by the Superintendent of Pensions.

We have made this representation before and we really have never received an answer as to why the suggestions that we have made are not satisfactory and cannot be accommodated in the legislation.

With respect, on page 8 there is a question of transfer payments, and this involves the right of people to take their money out of pension plans at a certain point in time and transfer it to another vehicle. We have no objection to the concept.

Our objection is that the section as drafted again does not take account of the special problems of multi-employer plans.

What Section 43 does not make clear is that you do not have the right in the case of a multi-employer plan to take your money out just because you terminate employment. In other words, you are working in the printing industry in the course of two years for, say, three different employers. Just because you terminate employment after four months, you should not be able to take your money out if you are going to work for another employer a month or so later. It does not make any sense to have this money going in and going out. It will create enormous problems for the administration of these plans.

So there has to be a provision that says that basically you can only take your money out and transfer it when you are entitled to terminate your membership in the plan. And there is a section that says you can terminate your membership in the plan after two years if no contributions are made in that two year period.

So this is really just technical. I do not think there is any problem here with the concept, but the

legislation as it is drafted will be really a nightmare, in my view, in my submission, for multi-employer plans.

You need a section that is exactly like Section 64(6). You have got it in Section 64(6) of Bill 170, which is the locking in provisions, and it should be here in Section 43.

On page 9 we deal with the question of contributions and delinquencies. Perhaps as you can appreciate, this is one the most important problems that multi-employer plans have because we have got a lot of employers, many of them small employers, and many of them regularly do not make the contributions that they are supposed to make. And the trustees have got the obligation and the duty to collect those contributions, to collect those delinquencies. Most multi-employer plans have a system set up to try to collect those monies in an expedited way. But you have got to be able to collect the monies quickly. If you do not collect them quickly, small employers especially may be out of business or bankrupt, or whatever, and have nothing left by the time you go to collect the monies that are not paid.

What is necessary, what is required is to have an expedited efficient mechanism for multi-employer plans to be able to collect monies that are not paid, which are, after all, pension monies, very important monies owing on account to the particular employees in question, quickly.

Now, the legislation just does not do that. You say in Section 56 that the employers have to pay. Well, that is not adding anything that is not there now. Contractually now they have to pay.

In Section 60 you say the administrator of pension plans can go to court and collect the money. Well, we can go to court to collect the money now. It does not help, though. It is such a long process of collection, and can be delayed for such a long period that it is not helpful. Nobody goes to court to collect these monies.

In Section 111 you say you can go to Provincial Court and get a conviction, prosecute the employer and get a conviction, and then if you get a conviction you can also get an order for the money. Well, frankly, that is not very helpful either. Provincial Courts are not the place for those kind of problems to be dealt with. The Provincial Court Judges have got a lot of important matters to deal with, and collection should not be one of the things that they are being required to do deal with. We are not saying that section should not be there; but it is just not effective.

What we are saying is that you need an expedited arbitration mechanism. There are mechanisms now in the Labour Relations Act, in Section 45 and Section 124, for the

construction industry that do provide for expedited arbitration.

What is required in our view is exactly the same kind of parallel legislation for the collection of these pension contributions for multi-employer plans, and the public will not pay the cost of any of that. The arbitration provision will be paid for by the parties themselves. It is not going to cost the public purse anything.

The mechanisms are now under the Ministry of Labour and the Office of Arbitration for these arbitrators to be appointed. It is not going to require setting up any new bureaucracy or any new problems.

All that is required, really, is a thoughtful application of an existing mechanism to a new use.

We have taken the time to suggest, though, the statutory language that should go in. We have not, frankly, ever had a response as to why this is not practical or reasonable, or has not been considered.

If I can go over to page 14, there is an analogous problem, and it really points out, in our view, something that is really quite silly, with respect, in Bill 170. It is the notice of delinquencies.

Instead of giving an expedited arbitration mechanism, the Bill requires that the administrator of a pension plan notify the superintendent of all the delinquencies.

Well, in the case of multi-employer plans in the printing industry I can tell you that each month there are many, many delinquencies. Some of them get cleared up in the next month; some of them get paid and some of them do not, and some go on, and it is constantly changing.

It is a hard job keeping track of them ourselves. It is all computerized. A lot of funds are spent on it. It is going to cost money to notify the superintendent, that is fine. But what is the superintendent going to do with the information? They are not just going to get it from the multi-employer plans in the printing industry, you are going to get it in the construction industry where the delinquencies are probably even more, and the garment industry and everything else. What are you going to do with all this information? Put it in a box? Are you going to spend public funds to put it into a computer?

The solution to the problem of delinquencies is not for us to give notice to the superintendent. The solution is to obligate multi-employer plans to collect them the best they can and give us the legislative means through an expedited arbitration provision that we will pay for, to let

us do the job properly. That is really the thrust of the representations on delinquencies that we have to make to you.

Section 57 on the notice of delinquencies just does not say anything at all about what the superintendent is going to do. Frankly, we do not think the superintendent is going to have the resources or the ability or the capacity to do anything about it. God only knows what they are going to do with the accumulation of paper that we send over to that office. Surely they have more important responsibilities. This one is ours if you would only give the trustees the effective mechanism to carry it out.

The next point that we make on page 15 is with respect to the duty of care, the legal liability of the Boards of Trustees of multi-employer plans. I should say at the outset that we have no problem with the duty of responsibility being imposed by the legislation.

The problem is the with the second sub section, which basically says that if you are on one of these Boards of Trustees, you have to use all the knowledge and skill that you possess by reason of your special profession or business or calling. This presents a special problem for multi-employer plans because, for example, the employer trustees who serve, serve gratuitously. They are not there because they are being paid or because it is any particular honour; they are there because they are being asked to serve and because their expertise and guidance and knowledge is necessary.

One does not want, in the case of multi-employer plans, to discourage those people from serving by saying to them, well, because you happen to be an accountant or you happen to be the head of a large business, that you are more responsible than anybody else because you have special knowledge and special abilities; even though you are serving gratuitously, you are not getting anything for it, and it is basically a service to the industry and a service to your employees to go on that Board of Trustees.

So we are just concerned that it is going to discourage qualified people from acting. It probably will not discourage them from acting until the first time they are sued for having failed to exercise some special responsibility, but certainly thereafter you are going to have trouble getting qualified people to serve, and that is not going to help multi-employer plans.

The second problem is that you are going to have a group of people in the room on a Board of Trustees, half of them from the Union and half from the employer side. Basically their responsibility as trustees is to gather to administer the plan properly. In our view, they should all

have one standard of responsibility, one standard of care. It should not be different for each person in the room because of their special knowledge and special position. It creates the potential for unnecessary conflicts among all those people to have one group saying, well, we have a higher responsibility of care or lower one than you do, or anything of that matter. It just creates the possibility of legal problems that do not need to be there, and putting tensions into the room that do not need to be there.

There is not a whit of evidence that this is necessary in the case of multi-employer plans, that multi-employer plans are not properly administered now, and that the job is not being done.

Section 23(1) standing alone says you have to exercise an ordinary care. Either just leave 23(1) and leave out 23(2), or else put an exemption in for multi-employer plans that says that 23(2) does not apply to them. We suggested that language on page 16 of our submissions to you, that exemption.

If the time comes when multi-employer plans do not do their jobs properly, and the evidence is there that this kind of a thing is necessary, that is the time to pass this. It is certainly not necessary to do it, in our submission, in advance.

On page 17, I only want to spend a couple of moments on this, these are the conflict of interest provisions.

We do not disagree obviously with conflict of interest provisions, but with multi-employer plans there are certainly some arrangements which could conceivably be regarded in some way technically as conflicts which should be dealt with.

For example, the Union, which might have very large computer services, could rent those computer services to the plan. Or the plan which needs to have a lot of documents printed could use one of the trustees to print the booklets. The Union, for example, may lease space to the plan.

Those kinds of things should be possible if they are done openly and disclosed. In the United States this is dealt with in the legislation, it is dealt with ARISSA. There are prohibitions of conflict of interest, and then there are exceptions to that set out in the United States code. And, frankly, it is a lot of trouble to do that, but it is the right approach.

The wrong approach is to prohibit these things absolutely because they are in the best interests of the members of the plan to be able to do them. And they are really not conflicts when they are open and they are

disclosed, when the contracts are there and when everybody knows about them and can look at the arrangement, commercial arrangements that are made, that are in the interest of all parties.

On pages 18, 19 and 20 there are these questions of amendments to plans. By the way, gentlemen and ladies, these are not the first submissions that we have made with respect to any of these matters, and there are a lot of points that we made before that we are not making today because a number of these points certainly have been accepted.

This section on amendments to plan has been largely redrafted, and we are quite happy with a lot of changes that have been made from the draft bill.

But there is still one problem that is left that should be rectified.

What this section now does, says, is that if you amend the plan, you only have to give notice now, to the members of the plan, that you are going to amend it if the superintendent thinks the amendment is adverse to the members. And that is fine, there is no problem with that.

But then it goes on to say that in any case, it does not really matter whether it is adverse or not, once the amendment is in you have to give notice to the members. That seems innocuous enough. But the problem is, it just is very costly to have to do it all the time, particularly when you are always amending the plan to increase benefits, or whatever.

Mutli-employer plans are regularly amending their plans to increase benefits, and these amendments happen all the time, and there are thousands of members across Canada.

So we have a very simple request, and that is that legislation now says we have to send out every year a notice to members saying what their benefits are, what their entitlement is, and once a year we should have to at the same time let them know what the amendments to the plan were in the last year. Not have to give them the annual statements and then in addition to that have another mailing every time we register an amendment with the Pension Commission.

It is a different matter if the amendment that we are proposing is adverse to the membership. Well, that, of course, the superintendent will tell us to mail that out, and that is fine. We have not had any one of those amendments and I don't think we will. But we certainly agree with that.

But technically there is absolutely no reason why we should have to go through this.

Section 27(4), if you will look at it, it lets the superintendent give an exemption to that mailing out requirement if the amendment has been agreed to by a trade union that represents the members. If you look at the last line of that.

You can solve our problem by adding on to those words - or is passed by a multi-employer plan - because a multi-employer plan where the Board of Trustees passes the amendment, it is like the Union agreeing, because half the representatives on the Board are the Union representatives.

So we have suggested that solution on page 20.

Alternatively, there is the solution of just saying the sub section that says that we have to mail out these amendments all the time does not apply at all, and we will give those notices annually to the members and that will be sufficient.

On page 21 there is the enforcement section of the Act, and my comments in this regard do not only apply to multi-employer plans, they do apply to all plans. We think that these sections are deficient, and that there is a serious omission from them, and the omission is that it does not allow for an order of the Superintendent of Pensions to be enforced in some circumstances, and it does not allow for a revised order of the Pension Commission to be enforced in some circumstances.

The Act has got in it, throughout the draft bill there are five or six places where it specifically says: An order made under this section that deals with this problem can be enforced as an order of court if it is registered at the Supreme Court of Ontario. That is okay, that is fine. But there is not one section anywhere that says all other orders made by the superintendent that are not challenged, that are not the subject of a hearing, or even where they are subject of a hearing and revised by the Pension Commission, can be enforced. This seems to us to be a major omission.

We set out all the sub sections here and set out at length why we think that authority just is not there at the moment.

At the bottom of page 23 we have set out an amendment that we think is necessary, that is consistent with the draft of the bill as it now stands. It just allows these orders to be enforced once, if there is no hearing process or if after a hearing, once the matter is decided.

It does affect us in some ways; for example, this

legislation requires the employers to provide multi-employer plans with certain information. The administrators of multi-employer plans cannot do anything unless the employer sends in a contribution report, or discloses the employee's age and address, and all that sort of stuff. The legislation requires the employer to send it in, but there is no mechanism to enforce it.

We could complain to the superintendent and the superintendent could order them to do it, but there is no way now of enforcing it. That is a very simple example, but it is an important omission. But it applies, as far as we can see, to a whole range of matters, and they would affect single employer plans as well.

So that suggested amendment is at the bottom of page 23, and over at the top of page 24.

One other omission that we think is in the Bill is that you can appeal. Under the Bill you can appeal from an order of the Pension Commission to the courts. There is a right of appeal, but there is no time limit for filing it. That does not seem to be very constructive.

So we have suggested on page 24 that if you are going to appeal, you should not be able to hold up the whole process by being able to appeal within any time frame, and 15 days seems appropriate. We think that addition should be made.

Now, that brings me to the problem of mandatory indexing on page 25. The comments that we make with respect to mandatory indexing have no application, I should say, to single employer plans. They have nothing to do with them at all because multi-employer plans are completely different. For example, there is no surplus problem in a multi-employer plan, there is no surplus issue. All the money that goes into these plans goes for the benefit of the beneficiaries, full stop. Not one cent of it is ever going to anybody else. So it is not a question of money being used for any other purpose.

Point number two, the contributions are fixed in collective bargaining, and you cannot just increase the contributions to the plan in the middle of the year or in the middle, whenever you feel like it.

The collective agreement is for a fixed period of one year or two years or three years. The employers' obligation to contribute is fixed, and unless they gratuitously say, well, yes, we will open it up and put more money in, there is no way of getting more money into the plan except for the contributions that come from the employers that are fixed in the collective agreement.

Point number three, most pension plans cannot reduce their benefits if they have been promised. You have got a section of the Act, I think it is Bill 14, which says that you cannot reduce a benefit that is already vested.

Well, there is an exemption already in the legislation for multi-employer plans, because the legislation recognizes that multi-employer plans can only spend the money that they have, and if they do not have it, they are going to have to reduce benefits. So there is an exemption already there.

Now, what we are saying is, it does not make any sense to require multi-employer plans to have to index compulsorily, because if the funds are not there, not going to be able to do it, and we are going to have to reduce benefits for everybody.

In the last six years these multi-employer plans have increased benefits to pensioners by about 22 to 23 per cent over and above the rate of inflation. So it is not as though these plans are not in fact increasing benefits to pensioners, but they may not always be able to do so. If economic times are difficult and there are layoffs, and perhaps substantial layoffs, the contributions simply cease. If the employer contributes per hour of the employee that works and if the employees are not there, the contributions go down. Sometimes you have got high inflation and adverse returns of the funds that are invested.

So generally speaking, it is possible to continue to increase benefits to pensioners and these plans do it, but it is not going to be always possible. And in the last six years certainly there have been some very difficult times for the printing industry.

So, given that there is not a surplus problem, given that these plans, that they cannot afford it, they are just going to have to be able to reduce benefits anyways. In our view there is no sense in requiring this statutorily.

The fact is that the CAPSA proposal, that is the Pension Superintendents Accross Canada, they have had an excess interest proposal as you may know some years ago, which they made. The actuaries of all of these plans costed that proposal, and the costs of that indexing were just extremely high. One of the reasons they are extremely high is that the actuaries, as they are probably required to do, have to always conservatively, make conservative assumptions about things that are going to happen. And so they often tend to assume somewhere in between the very best and the worst. But the costs that they indicated of that proposal were in some cases in excess of a hundred per cent of present costs of that particular CAPSA proposal, and those costs are set out on page 26.

In one case the costs of that proposal were as high as 120 and 127 per cent of the current cost of the plan.

Now, there is only one place for those costs to be paid, and that is basically in collective bargaining. Collective bargaining, in our submission, is, in these particular plans, not talking about single employer plans, but these multi-employers plans, everything is on the table in collective bargaining. And the parties should be able to allocate the monies where they need to, having regard to all of the priorities and the various circumstances, and they should not be required to put it in certain places as opposed to others if it is not necessary to do that.

So basically, the conclusion in that regard is that insofar as multi-employer plans are concerned, the whole rationale for indexing insofar as it relates to surplus problems does not exist.

These multi-employer plans have done a better job than a lot of others in terms of increasing benefits to pensioners, and will continue to do so. But they don't want to be compelled to do so because the costs of compelling it are simply probably too high to afford and because in bad times it is certainly going to result in benefits being cut to everybody. And that is not generally in the interests of anyone for pension reform, to have that outcome.

The last thing on that is of course these plans operate across Canada and, as I have already said, some operate across North America, although that is not terribly relevant. But it does make it difficult, very difficult to have one province go off on its own in a major way. I mean, there are always going to be some small differences. But for there to be major differences, certainly when the bulk of the membership is concentrated in one province or another, or in several provinces, it makes it very difficult to have different provisions across the country, it makes a nightmare of administering the plans. And for that reason, certainly in respect of multi-employer plans. And if you do put in something for mandatory indexing, there should certainly be an exemption for multi-employer plans. Thank you.

Any questions?

Mr. Chairman: Mr. McClellan?

Mr. McClellan: Thank you, Mr. Chairman.

Thanks to the Joint Committee again for a very, very strong presentation.

I think the argument that you make is a very persuasive one, and I think some of us, I am sure the

Ministry, our caucus as well has already had the opportunity to review some of the issues with the Joint Committee, and find them quite persuasive.

Just a couple of points of clarification. The key point that you make for me is that multi-employer plans are jointly administered, and because of the joint administration by labour and company you have a performance record that has been able to achieve the full use of all monies in pension funds for the benefit of membership and to achieve, in recent years at least, full inflation protection.

Can you explain to the Committee why it is that multi-employer plans are, by definition, jointly administered? Are there multi-employer plans that are not jointly administered? Why not?

Mr. Mitchell: Well, there are multi-employer plans that are not jointly administered, for example, in the public service, hospital plans. I do not think the Unions, certainly in hospital plans, do not sit on the Board of those Trustees, although they involve many different employers, many different hospitals.

Essentially multi-employer plans are private sector arrangements.

The pension plans have been bargained at the bargaining table, and one of the requirements for them has been that Unions have half the representation on the Board of Trustees, and the trust agreements set out how people are appointed.

I think when the legislation recognizes that there are differences, it takes that, Mr. McClellan, as the most important thing into account, so it defines it, when it grants the exemption, it defines it in that way. We are only going to give the exemption if you are structured in that way.

So there are some other multi-employer plans that are not jointly administered, but they are not going to have the benefit of these exemptions, they are going to be treated differently.

Mr. McClellan: I think we probably also want to see something in legislation that clarifies the status of surplus so that we are not dependent upon good performance or on practice, but there is something in the statute that -- what we would not want to see is a multi-employer plan that is unilaterally administered by employers which treat surplus in exactly the same way that so many single administered defined benefit plans do.

Mr. Mitchell: Yes.

Mr. McClellan: The other question I have is this: It sounds like the plans that you were describing are defined contribution plans rather than defined benefit plans. Are your members enrolled in plans that guarantee a percentage of earnings or a defined benefit or a flat rate, or is it in fact a defined contribution system?

Mr. Mitchell: It is really a hybrid. The contributions are fixed in the collective agreement. A certain percentage of earnings, for example, five or six or seven or eight per cent earnings that the employer must put into the plan. Then the plan does promise a certain level of benefit, and when that level of benefit is set, it is set according to what the trustees decide is prudent and what the actuaries tell them the plan can afford based on the funds that are there. So it is a mixture in that regard.

The key difference, of course, is the benefits can be reduced. The trustees cannot, if you cannot deliver -- and that has not happened -- but if you cannot deliver, the benefits could be reduced.

Mr. McClellan: But they can be reduced?

Mr. Mitchell: Unlike the defined benefit plan where I would have thought the contractual commitment to the employee would have to be met.

Mr. McClellan: They can be reduced, the contribution levels can be reduced?

Mr. Mitchell: The contribution levels could be reduced, but the Union would have to agree because they are fixed in the collective bargaining. And basically the Union's position always is contributions have to be increased and not reduced.

So the collective bargaining basically takes care of that problem.

Mr. McClellan: Okay.

Mr. Chairman: Mr. Lane?

Mr. Lane: Thank you, Mr. Chairman. I just have a very minor question.

Back on page 7, I just fail to understand your objection, sir, to Section 32(4), where you are saying that it would be your wish to have everybody belonging to the plan as soon as they become employed.

Mr. Mitchell: Yes.

Mr. Lane: You would have to work X number of hours each of the two years to become vested.

Mr. Mitchell: Right.

Mr. Lane: It seems to me that is going to be more confusion to the employee than what is being offered right now, because you are going to have to tell the guy at the end of the two years he has not worked those hours, so he is not a member of the plan.

Mr. Mitchell: Well, at the moment, if this is passed in its present form, anybody who goes to work under our plans will be vested for any amount of time that they work, because their membership in the plan cannot be stopped for a two year period. So if they work for a week or they work for thirteen months, however amount of time they work, they will be vested for that amount. So we are going to have full vesting. We will not have two year vesting; we will have full vesting.

The only way around that, if the multi-employer plans were to say, what the law will allow, you cannot belong to this plan unless you have earned a certain amount in each of two years. We would prefer not to do that.

We would prefer that they do belong, as it were, and that contributions be made on their behalf from the beginning, but that they not be vested unless they work a thousand hours in a year. There are usually about two thousand working hours in a year, so if they do half they would be vested. That is a lot better than two year vesting, as the way we see it.

Mr. Lane: It is a lot better if the guy stays, but if he does not work those thousand hours during the year then he is going to be disillusioned because he thought he was a member and he is not.

Mr. Mitchell: The other way he just will not belong at all. We would prefer that he belong, and at least it would be possible, if he works a reasonable amount of time, he is going to belong, rather than not being allowed to belong at all.

Mr. Paquette: It would end up with a double standard in a case of a private pension plan as opposed to a multi-employer. A private pension plan, your participation in the plan is synonymous with employment.

What happens in a multi-employer plan is you work for one month, the employer makes a contribution for one month, and that participation in the plan continues until there is a break in service, which is two years later. So thus a person who works for a month for a printing company,

participating in this plan, after one month of participation we would have to vest every one of those people, and thus the record keeping would be just abominable.

What we would have to do then is say you cannot participate in the plan unless you have two years employment. We would to put in some years rules in order to safeguard the plan, which would work exactly against the legislation and the intent of this Commission.

Mr. Lane: I see your problem with the record keeping, and so forth. Thank you.

Ms. Henderson: We employ students.

Mr. Smith: We get down to a very simple thing. At certain times of the year we employ students, and a lot of those are university students, go into a plant for a summer and work there for three or four months, and they do that two summers in a row. And we do not really want those people vested. That is really what we are trying -- Mr. Mitchell's thousand hour thing comes into it.

Mr. Lane: I guess that is where I got confused. You are saying that it covers the members from the start, but yet you still have to put in a thousand hours a year and I guess that's what is confusing.

Mr. Smith: There are two kinds of people that come into the industry, those that there as -- a small proportion that come in, but not insignificant -- they come in as casual employees and are there for two summers, or a short period of time, then do something else. Then there is the skilled people, and the industry is predominantly populated with people with very high skills. And when they are there, they are there probably for the rest of their working lives, and those people we have every sympathy for and want to protect. We are not unsympathetic to the other people; I think we are just afraid of the record keeping, with keeping vesting people who are out of the industry when they are 20 and we have got some responsibility for them until age 65.

Mr. Lane: Thank you. Thank you, Mr. Chairman.

Mr. Chairman: Mr. Bernier?

Mr. Bernier: Thank you, Mr. Chairman.

Gentlemen, I was interested in your comments with respect to mandatory indexing. I note that the Joint Committee made a comment with respect to single employer plans.

How difficult was it to reach a consensus on the multi-employer plan within that Joint Committee room? Was

it a unanimous decision? You might not want to answer that.

Mr. Mitchell: No, in fact it is, because essentially these plans were created by the parties themselves. For many, many years they have worked out their problems responsibly and provided increasingly better pensions collectively. And basically their view is when times are difficult they want to be able to tighten their belts, and when times are not difficult they want to be able to be generous in accordance with the needs of the time and the needs of the industry. And basically to determine for themselves in the Board of Trustee, given that there is equal representation, what to do with their resources.

So the general thrust of their view is that they should not be required to do something that they see as threatening, potentially in bad times that would have to cause benefits to be reduced to everybody. It does not seem to be sensible.

Mr. Bernier: So it was not a difficult decision?

Mr. Mitchell: No, it was not difficult in this context.

Mr. Paquette: As a matter of fact, I will now say, the decision was unanimous. And in many cases it is to the advantage of the employers to promote retirement.

Among the benefits that were brought about in the last year in one of the pension plans, it not only involved providing the retirees with some 35 per cent increase in one of the plans, but also reduced the penalty for early retirement at age 60 to half a per cent per year.

The employers, in their wisdom, feel that it is advantageous for the people to retire and to create employment for younger people to work on large pieces of equipment, and thus in their interest to provide better pensions. And in that case we had unanimous agreements on those points. So it is not difficult.

Mr. Bernier: Thank you very much.

Mr. Chairman: Mr. Lupusella.

Mr. Lupusella: Mr. Chairman, I have a few questions which I would like to raise, and it is in relation to the multi-employer plans.

It appears through the content of your presentation this particular plan is very attractive.

Could you please tell me for how long this particular plan has been in the market with other private pension

plans? Is this a new feature of private pensions that are existing in covering people or is it something completely new?

Mr. Mitchell: I understand certainly some of these plans have been in existence since the 1950s. And I don't know about them in--

Mr. Smith: Early '70s.

Mr. Mitchell: Some of them since the 1950s, and others developed for special problems.

For example, the early retirement plan is one that is created specifically to promote early retirement and to meet the industry problem of trying to encourage early retirement.

Mr. Lupusella: Do you know how many, if you have such a figure, how many multi-employer plans we have in Ontario?

Mr. Mitchell: I am sorry, I couldn't help you with that.

Mr. Lupusella: A rough estimate?

Mr. Mitchell: I think I have indicated the major industries, what they are. I probably have left out some. But I think the major ones, certainly there are a lot of plans in construction and in the garment industry, probably some with the transit. I am not really sure.

Mr. Lupusella: Let us go back a little bit to 1981 when Ontario was faced with an economic crisis, and certain political parties were raising concern about erosion of the private pension plan in the Province of Ontario, that they were eating all the profits that were supposed to go to the workers in Ontario. And we were talking about deficits at that time and, of course, I was not the promoter of this criticism, and the general position was that if all the private pensions would be liquidated. In 1981 there was a big deficit. There was no money in the funds at all.

Now, if you make this particular comparison between 1981, which is the economic crisis in Ontario, and 1987 when we are talking about the surplus of funds, were you really in red if all the pensions would be liquidated in 1981 in comparison to 1987?

Mr. Mitchell: Do we think that there would have been a surplus in 1981?

Mr. Lupusella: Yes.

Mr. Mitchell: The concept of surplus is just really

foreign to these plans. They do not accumulate a surplus in the sense that monies are used to reduce employer contributions or that on the wind up of the plan there is going to be a pot of money left to go back to the employer. There is no such ability.

Once the money goes into the plan, that money and anything that it earns, and the trustees are very careful to give this money to good investment managers, it all goes back to the beneficiaries. So in that sense, surplus concept just does not apply at all. It is not a legal problem or political problem that applies. I do not know if that answers your question.

Mr. Lupusella: Yes, I got the message. Thanks.

Mr. Chairman: Thank you very much, gentlemen, for your presentation.

The next one is from the Hamilton Committee for Independent Canadian Unions. We have Mr. Ellis with us. You may proceed.

Mr. Ellis: Our secretary who was to have been here, due to a last minute change of plans, is not here, and as a result I am going to have to read this myself. I hope I can do as good a job as she does.

Although your government has put together a fairly extensive pension reform package that it plans to proceed with this fall, there are two related issues that it has so far failed to address.

Your government's draft legislation does not provide for any kind of inflation protection for presently retired pensioners who have no alternative but to rely on their former employer to treat them in a fair and equitable manner.

We believe, and the Canadian labour movement supports our view, that employer contributions are a form of deferred wages, and accordingly, we think any windfall that results from this investment of employer contributions should go to the members of the pension plan.

When it comes to protecting funds set up to provide pensions for employees, Ontario Liberals seem to be ducking behind their traditional policy of being not necessarily for and not necessarily against action.

Protecting pension funds became a political hot potatoe in Ontario after the union representing Dominion Store employees successfully challenged multimillionaire Conrad Black's removal of nearly \$38-million from the pension fund they had negotiated from Dominion Stores before

Black had bought the grocery chain and sold a good part of it to the A&P. Another court ruling in mid August planned the Pension Commission for letting Dominion Securities, Pitfield, Ltd., grab \$1.7-million out of the pension plan covering A.E. Ames & Co. employees back in 1981.

Despite court decisions and despite a court charge of "blissful ignorance and undoubted negligence", Ontario Pension Commission has decided to let corporate pension funds rates continue. They had suspended the rates for a short "gun shy" period after the court decision, but quickly turned the green light back on for the corporations after Cabinet Minister Mr. Monte Kwinter made it clear that pension fund rates would not be outlawed in the new pension control laws. He wanted the Legislature to pass and after Liberal Premier Peterson fudged on the issue.

As we see it, Mr. Kwinter, whose cabinet job calls for consumer protection as well as supervision of pension funds has allowed a policy of benevolence to business ever since his appointment. Premier Peterson, responding to demands from the New Democratic Party leader Bob Rae for an end to pension fund rates and for pension benefit increases tied to the cost of living has reverted to the traditional Liberal policy of vagueness by saying that we cannot go around bankrupting companies, but on the other hand we have to be sensitive to workers' rights, too.

Many employees and labour unions, for example, believe that employer contributions to pension funds are a form of deferred wages; accordingly, they think any windfall that results from the investment of employer contributions should accrue to the members the pension plan.

But most pension experts disagree. Reflecting the employer's point of view, the consulting firm of William M. Mercer Ltd. argues that in a defined benefit pension plan the employer is obligated to contribute whatever is necessary to pay for the pension promised by the plan.

If a deficit is shown by the periodic actuarial reviews, the employer must increase his contributions so as to pay up the deficit over a period of years.

Appealing to symmetry, Mercer argues that since the employer has to make up for shortfalls, he should be the one who benefits from windfalls as well.

Mr. Mercer has got a point. But employers are not the only people that face shortfalls. In the absence of any mandatory inflation protection many retired workers have seen their real pension benefits decline over the years. Fairness would suggest that they should benefit from the windfalls as well.

There are many companies who do improve benefits for retirees on an ad hoc basis. Management consultants say that about three quarters of their large corporate clients have provided employees in the past five years generally in the range of 40 to 60 per cent of increases in the consumer price index. Firms that have provided that kind of protection should not be hassled if they want to take some pension funds from surplus out. Unfortunately, the members we represent do not fall into this category.

But for those employers who have done little or nothing to compensate their present retired employees for inflation, this government, in our considered opinion, should amend its pension legislation to make surplus withdrawal conditional upon some form of inflation protection.

On December 9th, 1986, reaffirming the government's strong commitment to inflation protection, Mr. Kwinter said words to the effect, "Ontario is the first province in Canada to commit to taking action on inflation protection for pensions. Therefore we have a special duty to ensure that the direction given for implementation is well reasoned and effective."

Although Mr. Kwinter states the above as his position, we can find nothing in Bill 170 that supports this. Also, in the years since his statement was made, there has been little or no action made to put this into effect.

While we commend Mr. Kwinter for his moratorium placed on the withdrawal of surplus funds from ongoing pension plans, we are still concerned with the lack of inflation protection for our currently retired employees who are already in receipt of pensions.

Since it has been at least six years since our members have received any compensation for inflation, it is our hope that your Committee will install a mandatory inflation protection program before the next election.

Thank you for your attention paid to the concerns expressed in our brief.

Mr. Chairman: Thank you very much.

Are there any questions for Mr. Ellis? Mr. Bernier?

Mr. Bernier: Mr. Ellis, you heard the comments of the previous deputants who were members of a joint management and employer pension package who are opposed to indexing. Did you hear their comments?

Mr. Ellis: No, I didn't.

Mr. Bernier: They were the previous submission.

Mr. Ellis: I might have, but I do not have a copy of it here.

Mr. Bernier: Where they say for multi-administered pension plans they would be opposed to inflation or indexing. Do you have a comment on that? I was impressed by the frankness of that Committee.

Mr. Ellis: We were just going on the statement made, and the last statement we had from Monte Kwinter was back in, I think it was December -- or was it October?

Mr. Bernier: December 9th, 1986.

Mr. Ellis: That is all we had to go on, and since we have had nothing since that time, we were basing our remarks on that.

Mr. Bernier: Maybe the Parliamentary Assistant can clarify that statement out for us. Is that the position of the Minister, of the government with respect to it?

"Ontario is the first province in Canada to commit to taking action on inflation protection for pensions." Made by Monte Kwinter on December 9th.

Mr. Offer: That is correct, Mr. Chairman. Certainly I would just ask if Mr. Bernier, if you would continue on reading, it would also indicate that the Minister then indicated that the Minister and the government realizes that they "...have a special duty to ensure that the direction given for implementation is well reasoned and effective." That was the preamble to the creation of an external working group chaired by Martin Friedland, Professor of Law, which is also manned by Mr. Jackson and Mr. Pilkey. And these gentlemen are seized and charged with the function of making certain that the direction given for implementation is well reasoned and effective.

I would want to make certain that we note the costs, the advantages and disadvantages and the impact that the different forms of inflation protection could have, would have and might have on the different pension plans now in existence.

I just suggest that to Mr. Bernier as a follow-up to the clause that he read.

Mr. Bernier: Would you not agree that that statement has left this Union group with a false sense of movement in this particular field, this particular direction?

Mr. Offer: Mr. Chairman, in view to Mr. Bernier, the

answer is simply no.

Mr. Bernier: How can you read, "Ontario is the first province in Canada to commit to taking action on inflation protection for pensions," and then you say no.

Mr. Offer: It is a fact, Mr. Bernier, that after the sentence which you have read there happens to be some sentences and some words that seem to follow which clarify and expand upon the single sentence which you have read. And, Mr. Bernier, if I may suggest, it is on that basis that my answer was, at first instance, no, that there is no problem with respect to clarification, and remains that way.

Mr. Bernier: I think the gentleman's earlier comments are right, a horse in both directions is to be taken.

Mr. Chairman: I think in fairness, Mr. Bernier, the point that you are making about mandatory indexing, the group that appeared before us before did not oppose mandatory indexing, only for the plans of their nature. The first sentence says that they take no position on that whatsoever. So they did not take the position that Mr. Ellis should not have mandatory indexing.

Mr. Bernier: The position I am taking, they are saying that the Minister made a statement with respect to that government's position.

Mr. Chairman: I understand what you are saying.

Mr. Bernier: I am trying to get a clarification for that position. I'm getting a wiffle-waffle answer.

Mr. Chairman: I think if you check the record...

Mr. Offer: Mr. Chairman, may I read the quote, because I don't like the wiffle-waffle response by Mr. Bernier, and we are expecting and hoping that we will have full support in clause by clause so that there will be no further confusion which you have indicated Mr. Ellis might have. So we are looking for full support on the clause by clause. But if I might put the quote: "Ontario is the first province in Canada to commit to taking action on inflation protection for pensions." Mr. Bernier then ended.

There happens to be another sentence: "Therefore we have a special duty to ensure that the direction given for implementation is well reasoned and effective." Statement by Mr. Kwinter of December 9 of 1986.

Mr. Bernier: I share your confusion.

Mr. Chairman: What I was trying to clear up, Mr. Bernier, I think you started off asking Mr. Ellis what he

thought about the fact that the previous delegation were not in favor of mandatory indexing. If you read page 25 of their brief, the first three lines, I suggest that the conception that you gave to Mr. Ellis, is not correct.

Mr. Bernier: It is multi-administered plans.

Mr. Chairman: That is right. But they were not opposed to mandatory indexing.

Mr. Bernier: They did not comment on it.

Mr. Chairman: Yes they did, it is right there.

Mr. Bernier: There is no comment.

Mr. Chairman: Why should I argue with you anyway.

Mr. Grande?

Mr. Grande: Maybe, Mr. Chairman, we can try to solve the problem that Mr. Bernier and the Assistant to the Minister has, in the sense of saying to the delegation that while you understood that there would be action in Bill 70 on mandatory inflation and inflation protection, the Minister understood by the action to mean a task force, and nothing else. In other words, another study.

Mr. Ellis: I see.

Mr. Grande: In other words, there is a difference. We are talking about action. You understood the action to mean inflation protection. The Minister understands the action to mean another study. It's as simple as that.

Mr. Ellis: So we are kind of splitting hairs on that.

Mr. Grande: That's right. Well...

Mr. Bernier: Mr. Chairman, the first paragraph: "In respect to mandatory indexing the committee simply takes no position whatsoever with respect to single employer plans, but opposes the requirement for mandatory indexing to multi-employer plans." That is the point I was arguing.

Mr. Chairman: Mr. Ellis, though, does not belong to a multi-employer plan, as I understand it.

Mr. Bernier: I asked him for a comment, whether he opposed.

Mr. Ellis: My purpose in being here is, we are concerned about present retired employees, and as we stated most of our employees have not received any kind of an increase in over six years. This is our main point for

being here.

For example, the Onex company, which used to be the American Can Company, have not given their employees any kind of an increase in over six years. This is not a poor company, it is not a fly-by-night outfit. It is not a small business. It is a wealthy corporation.

We just do not see any reason why -- We consider pension to be in a form of deferred wages, something that we have worked for, something that is rightfully ours and something that the company is not giving us. We just do not understand why there would be any hesitation on the part of Mr. Kwinter or any other government official to not see that point of view.

Mr. Chairman: We understand what you think. Do you happen to have a list of the members of the National Committee?

Mr. Ellis: You mean our membership list?

Mr. Chairman: Yes. The pension plans that are in the independent Canadian unions.

Mr. Ellis: I see. We could get them for you.

Mr. Chairman: Maybe Research could get that before we go into clause by clause. Okay. Thank you very much for your presentation, sir.

Mr. Ellis: Okay. Thanks.

Mr. Chairman: We will have some lunch and return at 2:00.

The Committee adjourned at 12:00 p.m.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

PENSION BENEFITS ACT

WEDNESDAY, APRIL 8, 1987

Afternoon Sitting

STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: McCague, G. R. (Dufferin-Simcoe PC)

VICE-CHAIRMAN: Guindon, L. B. (Cornwall PC)

Fontaine, R. (Cochrane North L)

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Lane, J. G. (Algoma-Manitoulin PC)

Lupusella, A. (Dovercourt L)

McClellan, R. A. (Bellwoods NDP)

McKessock, R. (Grey L)

Offer, S. (Mississauga North L)

Pollock, J. (Hastings-Peterborough PC)

Sheppard, H. N. (Northumberland PC)

Substitutions:

Bernier, L. (Kenora PC) for Mr. Sheppard

Poirier, J. (Prescott-Russell L) for Mr. Offer

Clerk: Deller, D.

Witnesses:

From Actrex Partners Ltd.:

Hirst, P., President

Patel, N., Vice-President and Director

From the Pension Commission of Ontario:

Salamat, G. P., Superintendent of Pensions

From the Ontario Chamber of Commerce:

Sanderson, J. A., President

Woodruff, L., Chairman, Ultramar Canada Inc.

Wakefield, T., Chairman, Pension Reform Committee

Meier, J., Member, Pension Reform Committee

From the Ministry of Financial Institutions:

Kwinter, Hon. M., Minister of Consumer and Commercial Relations and Minister
of Financial Institutions (Wilson Heights L)

From Towers, Perrin, Forster and Crosby:

Bharmal, S., Vice-President

Lee, D., Vice-President and Senior Actuarial Consultant

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday, April 8, 1987

The Committee met at 2:15 p.m. in room 228

CONSIDERATION OF BILL 170, an Act to revise the Pension Benefits Act.

(Continued)

Mr. Chairman: The first presentation is from Actrex Partners Limited, Mr. Hirst and Mr. Patel. Mr. Hirst, would you please proceed?

Mr. Hirst: Sure. Thank you very much, Mr. Chairman. We have prepared a written brief which all of you should have a copy of. What that brief does not say, and I would like to start off by saying, is, we are an independent, 100 per cent, Canadian owned consulting firm. There are five partners who are in the firm, all of whom are, including Pat and myself, actuaries as well. We consult in areas of pension employee benefits; and in those related areas, we have also provided actuarial advisers in life insurance companies.

We have a number of qualified actuaries on staff, including six Fellows of the Canadian Institute of Actuaries and our Chairman is also a Fellow of the Canadian Institute of Actuaries. We are not, however, representing the actuarial position here today, necessarily. Our senior has an aggregate of over 70 years consulting experience in Canada.

Bill 170 represents the first major restructuring of the Pension Benefits Act since its inception in 1965. The objects of that Act were to promote the establishment, extension or improvement of pension plans, and to ensure the sound funding of further pension benefits. Our submission expresses concern that some of the provisions of Bill 170 will go against these objectives.

Firstly, there are two Sections of Bill 170 which deal specifically with prohibition against discrimination. Section 53 prohibits discrimination on the basis of sex; while Section 54 prohibits discrimination on the basis of marital status.

The Government of Ontario has taken the position that such prohibition is required to safeguard the fundamental rights granted under Section 15(1) of the Charter of Rights and also under the Ontario Human Rights Code.

However, recent court judgments suggest that because of the provisions of Section 1 of the Charter of Rights, the Government of Ontario is not obliged to indiscriminately amend all its legislations to comply with Section 15(1) of the Charter. Indeed, neither the New Federal Pension Benefits Standards Act nor the New Alberta Employment Pension Plans Act prohibit discrimination on the basis of marital status.

Section 53 in Bill 170 presupposes that an employee will have access to an insurer who will be marketing unisex annuities.

Mr. Chairman: Excuse, Mr. Hirst, are you following your brief?

Mr. Hirst: We are actually going through it, but I am just summarizing the brief.

Mr. Chairman: Summarizing, thank you.

Mr. Hirst: If that is all right with you, sir?

Mr. Chairman: Fine, that is great.

Mr. Hirst: So, I am following the same order, but I am going to calculate it a different way.

Mr. Chairman: Okay.

Mr. Hirst: Section 53(1) in Bill 170 presupposes that an employee will have access to an insurer who will be marketing unisex annuities.

Under the current insurance laws and regulations an insurer is not obliged to offer such an annuity. Indeed, it could be construed as discriminatory against males if they were to do so.

If they were to do so, and in order to protect the financial solvency of the insurance company, the insurance company would likely market unisex annuity rates based on the female mortality tables or something close to the female mortality tables; to do otherwise would be unsound insurance practice.

The use of unisex mortality tables may in some situations have certain consequences on the solvency of a pension fund. And rather than go through the example in our submission I would simply refer you to paragraph 3.5 in our submission.

Essentially, what that paragraph tried to exemplify is that the plan can have sufficient assets to meet the pension obligations using realistic mortality assumptions. However,

one member, a male member, by exercising the option against the plan can receive a transfer value far greater than the true value of his benefit expectations because the amount has been calculated on a unisex mortality table.

The employer -- who will be responsible for the deficit -- will be the loser in this situation. To avoid this, employers may well elect to do all these calculations on the basis of male mortality tables, or something close to male mortality tables, with obvious adverse consequences for the females.

On the basis of the recent court decisions, we suggest that the Government of Ontario has the power to permit discrimination on the basis of sex under private pension plans, provided it can be shown that such discrimination is based on bona fide grounds.

We further suggest that there is incontrovertible scientific and statistical evidence that the life expectancy for a group of male lives of a given age is significantly lower than that for a group of female lives of the same age.

Accordingly, our first recommendation is the differentiation on the basis of sex in the determination of the commuted value of pension benefits be permitted. And in consequences, the words, "or the commuted value of pension benefits" in Section 53(1)(b) and the whole of subparagraph (a) of Section 53(2) be deleted from the Bill.

Section 54 of Bill 170 purports to eliminate discrimination on the basis of marital status.

There are many other governmental programs which have historically provided discriminatory benefits on the basis of marital status and continue to do so.

Examples are: The Canada/Quebec Pension Plan; Guaranteed Income Supplements; the Spouse's Allowance, under the Old Age Security Program; Ontario's GAIN System; the Income Tax Act, itself; and, even Bill 170, which under Section 45 provides a discriminatory benefit and that a pension payable to a married employee must be in the joint form.

Mr. Guidon: 45 or 49?

Mr. Hirst: It is 45, it is a typographical error, thank you.

Most of these discriminatory benefits when introduced were heralded as major reforms in social welfare for the protection of the needy and the disadvantaged members of society, especially elderly woman.

What Section 54 will likely result in is employers removing any form of subsidized spouse pensions from their plans. This will eliminate any discrimination on the basis of marital status and will also eliminate any difficulty in estimating the age of the hypothetical spouse of a single employee. It will also remove what is a socially desirable benefit. Surely we should be encouraging the provision of spouses' pensions, not discouraging it.

Accordingly, we recommend that Section 54 be deleted in its entirety.

Section 40(3) requires that in a contributory defined benefit plan no more than 50 per cent of the commuted value of an employee's pension benefit can be met from the accumulated employee contributions.

We believe that the 50 per cent financing requirement combined with crediting interest at a realistic rate will tend to provide more favourable benefits to terminating employees - especially those with short service - at the expense of the other continuing employees.

Of all the other features of pension reform included in Bill 170 this provision will have the most significant impact upon the pension costs under contributory defined benefit plan. Furthermore, additional costs are directly related to the average age of the plan membership; the younger the average age the higher will be the additional cost.

Some employers with contributory defined benefit pension plans may therefore revise their plans to provide a reduced level of non-contributory defined benefit; others may replace their defined benefit plan by defined contribution plans; others may wind up their plans entirely. None of these actions is consistent with the objectives of the legislation.

Accordingly, we recommend that Section 40(3) be modified to replace the 50 per cent by 100 per cent.

We are extremely puzzled by the prohibition against integration with Old Age Security Benefits in Section 55(4) and (6). The GAINS Program in Ontario integrates benefits with the full amount of the Old Age Security and the CPP Pension Benefits. This is both appropriate and prudent, and private pension grants should be permitted similar integration.

Retirement income is derived from many sources, of which Old Age Security is but one. The private pension plan is another component of the total retirement income of an employee. We suggest it is only reasonable and sensible to recognize the Old Age Security Benefits when designing a

pension plan.

Furthermore, even if this prohibition is allowed to stand employers will still be able to devise a suitable step rate formula which would be a very close proxy to integration with the Old Age Security. Indeed, a number of plans are already designed in this way.

We urge the Standing Committee to place greater emphasis on the basic aims of the legislation and lesser emphasis on trivial intervention in the benefit design and detailed administration procedures.

We recommend that Sections 55(4) and (6) be deleted.

Section 49 requires that on death prior to retirement the benefit payable shall be equal to the commuted value of the employee's accrued annual pension benefit.

We suggest that retirement income programs are primarily established to provide retirement income benefits, not death benefits; while group life insurance programs are designed to provide death benefits, not retirement benefits. Each plays a unique role in the financial security of the employees, their survivors and beneficiaries.

The design of pension plans and group life insurance plans makes appropriate allowance for the impact of taxation and other regulatory requirements. More importantly, greater emphasis is placed on the insurable needs and/or the adequacy of the benefit levels under both arrangements.

If Section 49 is not deleted or modified, employers will likely change their group insurance programs to provide an offset for the death benefits payable under the pension plan. The ultimate effect will be that the beneficiary of a deceased employee will receive much reduced net after tax benefits, since the benefits payable under a pension plan are taxable as income to the beneficiary.

Accordingly, we recommend that Section 49 be deleted.

In recent years there has been a lively debate on the issues of pension fund surplus refunds and mandatory inflation protection. Frequently, these two issues have been linked together.

We firmly believe that these two issues should not be linked together. Each should be viewed on its own merits.

We urge the Committee to exercise a great deal of caution in these areas. Any significant changes, however well meaning, may lead to curtailment of private pension plan benefits and coverage.

In general, we believe that the surplus should be owned by the party which bears all the risks associated with the pension plan including the obligation to meet all deficits. There are exceptions to this general rule where the plan documents explicitly provide otherwise or where the contributions were negotiated -- the contributions not the benefits.

Any legislative action to deprive the employers of their rightful entitlement to pension fund surplus would in the long run result in a weakening of the financial solvency of the private pension system. Such action could lead to either a significant weakening of funding policies -- i.e. less conservative funding -- or the termination of pension plans in their entirety. In other words, it would do nothing to protect the very people this legislation is design to protect, namely, the plan members.

Private sector employers are concerned about the unpredictable nature of the additional costs associated with inflation protection, especially where such protection is tied to the Consumer Price Index or such other cost of living index. Inflation protection could impose significant additional costs on private pensions plans. This, together with the many other time consuming administration requirements and additional costs of the pension reforms included in Bill 170, could lead to private sector employers winding up their defined benefit plans.

In such an event, inflation protection will be meaningless since there will be nothing left to inflation protect.

I guess, our comment there is that we would caution very strongly the Committee and the Government that there has to be a defined line drawn between what is socially desirable and what is affordable.

Thank you for your attention and we are opened to questions.

Mr. Chairman: Thank you. Any questions? Mr. McClellan?

Mr. McClellan: Thank you, Mr. Chairman.

Mr. Hirst, you indicated that -- and I am just trying to find it -- one of the arguments that you made around ownership of surplus was that it should reside with those who face the risk.

Do you not think that there is a risk faced by employees who have pension plans which have no inflation protection, who see the value of their pension dollar reduced; for example, since 1971 to something like thirty-two

or thirty-three cents?

Do you not think that employees are also subject to a real and very often dramatic risk of a complete deterioration of their standard of living?

Mr. Hirst: I think that on the inflation protection issue, yes, employees are exposed to the risks of inflation. This is true of pensioners, it is true of deferred pensioners, it is even true of active employees. Inflation may reach such proportions that wage increases, for example, cannot keep up with inflation. That risk is a known risk. No one has promised the employee that the pension will be protected against inflation.

Were possible, many employers have provided some form of increases in pensions after retirement. In fact, many employers are doing this and it is a negotiation situation, quite often the Union will provide an increased pension in the overall package. What we are talking about, though, is surplus refunds.

Under a pension plan that provides a defined benefit, which the employer has guaranteed to pay the employee, if the performance of that pension plan, for whatever reason, goes against the fund and there ends up being a deficit -- the classic situation of that being during the 1970s -- the employer is required under the law to amortize those deficits over a fairly short period of time.

Employers willingly and readily accept that when they set up pension plans and when they proceed with funding their pension plans. To turn around, when the situation reverses, and to say that, "Fine, when things go against the plan you must put some more money in, but when things go for the plan you must put the money away," to our my mind is neither fair nor reasonable.

It will also lead to a situation of the employer saying, "Well, let us either fund the plans as minimally as we can to avoid any surplus creation or let us get rid of our pension plans altogether and give the employees something else." And those are the severe risks that we see in this whole surplus issue.

Mr. McClellan: But are not companies entitled to make up, in part, any unfunded liabilities by amortizing their shortfall over, in fact, a relatively long period of time; I thought, fifteen years?

Mr. Hirst: Five years.

Mr. McClellan: Five years. Maybe the Commission can help me out, are there not circumstances where a longer period of amortization is possible?

Ms. Salamat: There are extended liabilities with funding over fifteen years, and from our experiences there are some deficits though over the valuation period and that is funded over five.

Mr. Hirst: And to answer that, I am not sure that the period of time is necessary relevant; the fact is that the employer is required to make up that deficit.

Mr. McClellan: Well, I understand that, but it would be helpful as we try to proceed through this discussion -- and I tried to make the point before we started -- if we had some factual information from the Commission, so that we would know, in relation to total pension funds, how much is surplus, how many funds are in the state of unfunded liability, and how frequently. And what the relationship is between surpluses, on the one hand, unfunded liabilities on other; whether they balance themselves out or whether there is a surplus on one side of the ledger or the other.

We are in the stupid position of not having any of that information because of the refusal of the Pension Commission or the Ministry to provide it. So, we are trying to work our way through the dark in the absence of the kind of data that is necessary to come to rational decisions.

My guess is, that it is possible to work out reconciliations - actuarial reconciliations - that would achieve a balance between unfunded liabilities, on the one hand, and surpluses on the other, without permitting companies to do what Conrad Black tried to do, which is essentially to loot the pension fund of something, like, \$68-million for purposes that had nothing to do either with surpluses or unfunded liabilities, or contributions, or anything else. It was a straight grab.

That is the kind of thing that we are so concerned about. On the one hand, in the absence of any inflation protection in the legislation at all; on the other hand, a situation where some companies are able to make straightforward grabs that have nothing to do with the interest of the members of the plan or actuarial considerations at all.

Thirdly, the situation which you have not addressed, which is what the Commission refers to as "Service Contribution Holidays", the writing off of annual surplus contributions against surplus funds without any relationship between the history of performance of the funds; whether or not there have been unfunded liabilities in past or not; whether there are on-going liabilities that had to be met or not. So, we are dealing with a situation that, in some respects, remains very unclear, but the evidence that we have indicates a lot of abuse.

I understand the points that you are making, but it seems to me that you have not addressed one of our fundamental concerns, which is the siphoning off of surplus funds without any relation or consideration to the interests of the members of the plan or the actuarial requirements of the plan.

Mr. Hirst: Well, on the surplus refund issue, I think, part of the problem here is that there have been a few rather dramatic cases that have received considerable publicity and that always brings the whole matter to the attention of everybody.

Some figures that I got from the Pension Commission, just a short while ago, suggested that withdrawals of surplus in Ontario from pension plans over, I think it was a three-and-two-thirds year period, up to November of '66 and these figures are actually contained -- sorry, '86 -- were somewhere in the order - for both terminating plans and on-going plans - somewhere in the order of \$550,000 to \$600,000-million.

I am also advised by the Commission that the assets they have under their regulation, if you like, of pension plans are somewhere in the order of fifty-five to sixty billion dollars, so we are talking about a one per cent withdrawal over maybe a four year period.

That does not strike me as being onerous. And it must be remembered that there are significant requirements -- some would argue too significant -- which an employer has to meet before they can even consider withdrawing any surplus from an on-going plan. They must leave a cushion of 25 per cent of the liabilities which is a significant cushion. They must provide for at least the next two years employers' contributions. They cannot withdraw surplus that relates to employee contributions. So, there are significant hold backs that are imposed upon companies to do this.

Mr. McClellan: What about the question, though, of service contribution holidays?

Mr. Hirst: There are two aspects to that.

The first is, that under the tax regulation, once the surplus reaches a certain point an employer is not permitted to make tax deductible contributions to the pension plan until they have reduced the surplus to a level that is, at least, equal to -- or, no, more than, I should say, the next two years current contribution requirements.

More importantly, it seems to me that if you want to argue that in the deficit situation employers are given the right to pay off their deficits over a period of time, whether that be five years, fifteen years, or whatever

period, then sure it is appropriate, on a surplus situation, that they can take these contribution holidays provided there is still sufficient surplus in the plan or, at least, provided there is still sufficient assets in the plan to fund the benefits that are being promised.

Because the defined benefit pension plan is a promise of benefit, it is not a promise of assets. And the whole purpose of this legislation is to ensure that that promise can be kept and I think the legislation has done a pretty good job in that area.

Mr. McClellan: So, when we look at Section 23 of the Act, which requires the administrator of a pension plan to exercise care, diligence and skill as though he were dealing with the property of another person; the property of another person, in your view, is not the property of the employees on whose behalf --

Mr. Hirst: No, that is not true. The property is the promised benefit, that is what is in the document, that is what is in the negotiated contract. If the negotiated contract or the document says otherways, if the assets belong to the employee, then, okay, we are talking about a different thing.

But when the contract says provide a benefit, the employer's obligation is to provide that benefit. And the employer's obligation is to do everything that he thinks proper and appropriate in compliance with regulations as well and in compliance with what the actuary recommends as well, to ensure that the plan is appropriately funded.

And part of the reason there are these surpluses right now is that that actuaries purposely take a conservative view of funding because it is much better that in the end there is a surplus than there is deficit. And this good from a business point of view, it is good from the point of view of protecting the members of plan, and so on.

That is part of the reason that these surpluses have arisen and I think that is very appropriate and proper. But if you are going to say to employers, "Okay, as soon as a surplus arises, all of a sudden we are going to move from promising to do the benefit, to promising those assets," then the employer is either going to say, "Fine, I am going to switch my plan to do nothing but promise assets," which is a money purchase plan -- which in many respects is not as good as defined benefit plans -- or they are going to wind up the plans altogether. And if they wind the plans up altogether we do not have a surplus problem, but we do not have any plans either.

The alternative is that they will fund the plan, the defined benefit plan, on as least a conservative basis as

they can because they know that as soon as a surplus arises it is going to be taken away from them; whereas if a deficit arises they are going to have to put more in.

Mr. McClellan: Unless they are required to do otherwise?

Mr. Hirst: Yes.

Mr. Chairman: Any other questions? Mr. Lane?

Mr. Lane: Thank you, Mr. Chairman.

This was not addressed in your brief and I have been wanting to ask somebody this question and, I guess, you are the one that I feel would be able to help me with an answer.

Many companies do not have a pension plan, per se, but they have a benefit plan. In other words, they share the wealth, they will share the profits with their employees, so their employees will have some money to buy RSSPs or make some other kind of investment for retirement. Or they offer shares in the company for less than book value, so they have a profit opportunity and so forth.

How do we work out that sort of situation? It is an employee benefit, how do we define that in relation to this Bill?

Mr. Hirst: I am not sure I follow your question.

Mr. Lane: The employer is obviously giving the employee a benefit, but it is not a pension plan. So what happens in the overall picture, I guess, I am saying, in that situation?

Mr. Patel: I guess that kind of plan would not be a tax shelter or is not subject to the pension benefit legislation, so the employee, per se, does not have any legislative protection.

All the rest, relating to the investment expenses, mortality, et cetera, are then borne by the employee because the employee would then -- if he is fortunate to have a lump sum amount of money available when he retires -- then he could take that pot of money and buy an annuity from an insurance company. But all those mechanisms, there would not be any tax shelter there, so the employees will be taxable on all the accruals as he goes along.

Mr. Hirst: Are you talking about a defined contribution pension plan or are you just talking about a basic profit sharing plan where the employees get given some cash?

Mr. Lane: I think a lot of companies, as opposed to -- up in the north country, anyway, a lot of companies do not have a pension plan, per se, but they do have a benefit plan where they share the wealth or offer shares at reduced value and so forth.

Mr. Hirst: Profit sharing process.

Mr. Lane: They are just out there on their own. They would not be effected one way or another by this particular Bill?

Mr. Hirst: No.

Mr. Lane: Okay, thank you.

Mr. Hirst: At least I do not think so.

Mr. Chairman: Any other questions?

Thank you very much, gentlemen.

Mr. Hirst: Thank you.

Mr. Chairman: The next presentation is from the Ontario Chamber of Commerce; Mr. Sanderson, the President and others.

For the purposes of recording, Mr. Sanderson, would you introduce yourself and the others in your group.

Mr. Sanderson: Yes. My name is John Sanderson, I am the President of the Ontario Chamber of Commerce. On my right is Mr. Laurie Woodruff, who is Chairman of the Board of Ultramar. And on my left, far left, is Jerry Meier. And on my immediate left Taycey Wakefield. Taycey is Chairman and Jerry is a member of the Pension Reform Committee of the Ontario Chamber of Commerce.

Mr. Chairman: Thank you.

Mr. Sanderson: The Ontario Chamber of Commerce is pleased to be here today to make this presentation. As you all know we have across Ontario, in all parts of the province, some 60,000-odd members through 150 local Chambers of Commerce in the north, in the east, in the south, in the West, and in Ontario.

Generally speaking we support the federal/provincial concepts, and principles, for pension reform. And particularly, the concepts of earlier vesting, improved and enhanced portability, survivor benefits under pension rules, fuller disclosure methods, and credit splitting on marital breakdown.

We support the concepts that have been approved in the federal/provincial studies in that area, but we do have some serious reservations about possible indexation of pensions. And, as well, we have a couple of points to make about specify wording in the Bill that we are bringing forward to you today.

We do have a written submission and this submission details the specific and fairly technical concerns that we have and we do not intend to do other than just mention them today. We do not intend to get into any detail on that.

We would like to concentrate on the question of indexing. Our first speaker will be Mr. Laurie Woodruff who would like to make a couple of points with you with respect to his own pension plans and his company. And he will be followed by the members of Pension Reform Committee who will outline in very general terms the brief that we are presenting here today.

So, Mr. Woodruff?

Mr. Woodruff: The Chamber is a pretty big organization and not everybody in that organization has exactly the same views. My views are a little bit different. I thought I would give them to you today and also tell you the effect that the proposed legislation has already had in our case.

Our company started out as a collection of small independent companies; some of whom had pension plans, some did not. The variety was extreme. There was no central fund. We put these together under one corporate umbrella and gradually developed a pension plan which, at the time, was fully funded by the company; which ran it at one-and-a-half per cent of final earnings over the last five years; which had CPP and OAS offset; which had a provision for espousal coverage, but at a reduced rate; which did not allow for early requirement without cutback in the pension, and so on.

This pension also was paid out to the pensioners as a annuity. At that time, and as is still the case, our industry was in some difficulty. There was a great deal of competition. There was even some doubt as to whether the survival of the company was really going to take place.

This is the case with a great many people, I think, that have pensions. In order to look after this we funded our plan in a very, very conservative way and we payed out annuties so that we had every expectation, regardless of what happened, of looking after the promises that we made to employees of a defined benefit.

When the company was purchased by Ultramar, some ten years ago, we put the two companies together, melded the two pension plans, and as usual took the best of each. And we have now ended up with a pension plan which has 2 per cent of final earnings on the last three years of payment. It has some CPP offset, but no OAS offset. It has 66 per cent spousal coverage. It has life insurance. It has medical insurance. It has early retirement at age 60 with no diminution of pension. It has a number of other features which have made it an extremely good plan, in my mind, and it is fully paid for by the company.

We are told now that this is not good enough. We are told, for instance, that we have got to pay for spouses that employees do not have. We are being threatened with 60 per cent inflation protection, perhaps 100 per cent with the next government, in the wings at least. We may be getting pressures to go 100 per cent for people we do not still have on our payroll.

We have got a number of other features that are being asked for by governments who do not know how much it is going to cost us; who do not fund their own plans properly; who do not look at their own plans to see what actuarial exposure they have got. By governments that cannot get together and give us a pension plan across the country, legislation we could work with.

Our employees, for instance, expect to be Canadians. I cannot give a different pension in Quebec than I give in Ontario or give some place else. I have got to end up giving the best pension that we have any place to employees everywhere.

You cannot move people back and forth across this country and say, "Well, your pension has changed this year because you are in Quebec and it has changed, again, because you are in Ontario."

You are also giving us exposure to pensions that are not in the Pension Plan. A great many industries give pensions above the federal limit that you can take out of the pension plan, which is seventeen-hundred and fifty-odd dollars a year, for a year of service. And if you add to that inflation indexing on top of that, you have practically doubled our pension cost.

I think that we are in a position where you are not listening to all of the people. You do not know what all of the pensions are. Pensions are very different across the country. They are not each one the same as the one sample that people have in mind.

We are very interested in the welfare of our people. We care about them, we know them. I have had every one of

our pensioners visited every year to make sure that they are coming out all right. That they do not have problems with their medical expenses; if they do not need some help with looking at their housing. These people have looked after their retirement not only with our pension, but with the CPP, with their savings, with the fact that they have purchased their house. They are all right. They have planned for their pension. They do not need a great deal of extra help; particularly, when there are many people in this country, many people who have no pension plan at all.

I think defined benefit plans are in real trouble. I have thought that for a long time. We designed our plan to look after our long-term employees, the ones that we really thought were most important to us. We are told now that that does not matter. This is deferred wages; it has got to go to everybody.

It went to everybody, but it was better for the long-term employees under the defined benefit plan. I do not think any type of plan is now safe from the desire of governments to get in there and tell us how we should run them and what they should have in them. It is my intention to get out of the pension business completely.

The Federal Government have now made it possible to get a much better savings plan arranged for our employees than we have had before. They have also made defined benefit plans far, far less attractive for the employee. An employee of any seniority in a company with a defined benefit plan now cannot use his RSP to any degree.

So what I am planning to do, now, is to cancel our pension plan, pay off the members of it what we owe them, and start again a savings plan for each employee. I think I can make this at least as good for most employees and for all employees -- better for some employees than the current plan I have.

It will have alot of advantages. It is going to be portable. You asked me to make a defined benefit plan portable. I have got a number of employees now that I took over from Gulf well over a year ago. I am still fighting with Gulf to try and get a measure of how much it costs to transfer their benefits under a defined plan. There is no good way to do this.

If I go to a savings plan, I have avoided that problem. I have given them money which they can see in their hand. They are protected if the company is taken over. They are protected if there is any other kind of problem of this sort. They have got their own control of their own money. They can put it into a RIFFE when they retire, if they want, and get some inflation protection if that is the way they want to plan. They can have the money

invested the way they want to do it. And I will end up having a known quantity of money which I spend. It is a sizeable amount of money, but it is known. And it is the very uncertainty that I am facing now that is really driving us to this.

And I thought that you should know that you have already pushed at least one company into getting out of defined benefit pension plans.

Ms. Wakefield: I will take over and make some specific comments which are in your submission that we have handed to you in advance, which relate to Bill 170, as now drafted. They are fairly technical and we will just skim over them for summary purposes. I will make some suggestions, as will Jerry, and we are taking these in order of sections.

Section 19, the Conforming Amendment, offers some problems for some plans in that there may be some provisions that you are now required under new Bill 170 to provide which you provide now under some other type of benefit plan, disability or some such. By having Bill 170 come into force at the same time that these are in place -- i.e. before new contracts are negotiated -- you may in fact provide for the period before a new contract is negotiated with employees for double benefits, double disability benefits to be paid. It is a technical point, but we suggest that Bill 170 should not come into force until after new contracts are negotiated to avoid this problem or some other reasonable period, if the contracts are of a long-term duration and will not expire within, say, three years.

With respect to Section 40(3), the 50 Percent Rule. We suggest that to determine the mandatory 50 per cent of the commuted value that the employer must contribute, that the total pension plan be considered.

While only a portion of the benefit may be directly related to employee contributions, a total pension plan is designed to create a total benefit and it usually has some relationship to pre-retirement income. Accordingly, the commuted value of the total pension benefits should be used in calculating the commuted value to ensure that the employer contributes 50 per cent of the cost.

With respect to Section 41(2), Ancillary Benefits in Commuted Values, we have a concern that when determining the commuted value that ancillary benefits, which may not be taken - which are optional or have certain contingencies which must be met - that those not be included for the purposes of determining the commuted value. It is possible that if you take the total grossed-up amount that an employee might be at some point liable for, if he or she chose to elect a certain number of options, and paid on

credit splitting 50 per cent of that out, that you would then, if the employee did not elect those certain options, end up not having 50 per cent to apply to the employee.

Accordingly, we think that when you determine commuted values, you should take only that which is a certain amount, not contingent on certain things like early retirement or disabilities; those kinds of things.

Jerry?

Mr. Meier: Thank you.

Section 43 talks about the transfer of commuted value of an earned benefit.

Section 51 then goes on to permit the plan's sponsor to require the transfer of that commuted value only if the value of that benefit is no greater than 2 per cent of the year's maximum pensionable earnings, which amounts to \$43.00 per month, which, in the Chamber's view, is an inappropriately small amount, which will add to the administrative burden imposed on the employer.

We are therefore recommending that the employer or plan sponsor may be required or may require a transfer of such commuted value which is no greater than 10 per cent of the year's maximum pensionable earnings.

Section 49 presents a similar concern with the spousal benefit on the death of a plan member, where the plan's sponsor may, again, be required to bear substantial administrative costs related to relatively small benefit amounts. We would suggest, again, that 10 per cent is not appropriate, either, there.

There is a related concern with that provision, namely, that the survivor of a member who dies after reaching early retirement age will continue to be allowed to receive 100 per cent of the present value. Whereas under the Federal Legislation the individual who becomes eligible for early retirement then becomes subject to receipt, or their survivor does, of a 60 per cent joint and survivor benefit. We are recommending that a similar provision be incorporated in the present Bill principally to avoid the disincentive that is now provided to early retirement.

Section 52 deals with Court Orders under the Family Law Act. We are concerned there that the Act and Regulations be sufficiently specific to assist the Court in defining what may or may not be done in the splitting of pension benefits. And again, as in Sections 43 and 49, we are concerned that the plan's sponsor will be left to bear the administrative costs of relatively small pensions or the payment of more than one pension in the case of an

individual employee or retiree.

Section 54 talks about discrimination on marital status and next to surplus withdrawals and mandatory indexation, probably poses for us the largest concern of what is now in Bill 170. And that is that the Ontario Legislature has seen fit to introduce a principle, which is not, in fact, included in the federal/provincial consensus, that will attract further costs to plan sponsors, as well as an administrative burden.

We are, therefore, encouraging Bill 170 to be amended to allow employers to be allowed to comply with this legislation if, in fact, it is your intention to provide for protection against marital discrimination by at least allowing the employer to incorporate that provision without attracting additional costs to itself.

Inflation indexation has already been the subject of Mr. Woodruff's comments and, in the interest of time, probably not worth additional emphasis. And I believe that it is the Chairman's intention to include further comments in his summary remarks.

Mr. Sanderson: Mr. Chairman, that is the end of our presentation. We would be happy to answer any questions you do have. We do have a couple of closing remarks, very short, but we would be happy to answer any questions.

Mr. Chairman: Mr. McClellan?

Mr. McClellan: Thank you, Mr. Chairman. I do not know whether any of the witnesses remember the last set of hearings that the Legislature had on the issue of pensions, which was the work of the Select Committee on Pensions in 1981 and 1982. I do remember that the Ontario Chamber of Commerce came before the Select Committee, of which I was a member, as well as at least twenty business and employer associations. We had weeks and weeks of hearings on the recommendations of the Royal Commission on Pensions, which it reported in 1981, and one of things that we were discussing was inflation protection.

At that time, believe it or not, there was a remarkable consensus, that included employee groups, government social service groups, individuals, and business and employer associations -- including, as I recall, the Ontario Chamber of Commercial -- that the issue of inflation protection was absolutely crucial if the private pension industry was to survive. There simply had to be inflation protection and that excess interest, the use of interest over and above that which was required to maintain actuarial value and guarantee a fair rate of return, could easily be used to provide inflation protection. I do not recall opposition at that time. I may be wrong, but I do not think

I am wrong.

Mr. Sanderson: We have not reviewed that particular presentation. I believe that our position has been reasonably consistent throughout the last few years, that we are opposed and concerned about inflation protection. We believe that inflation is not a creature of business, but a creation and under the control of government more than business. And further, that to some degree indexation of costs helps feed inflation. So we have some concerns from, perhaps, a theoretical point of view.

We are particularly concerned that already parts of the Bill will cost business in Ontario significant amounts of money, parts of the Bill which we have agreed with and support.

Pensions, as you know, are not mandatory benefits in the province. Only certain employees get pensions. We are concerned about a very serious increase in pension and payroll costs beyond the general impact of the Bill, without any corresponding cost reductions or productivity improvements.

Our concern lies at the increasing competition that Ontario industry faces as we become more of a Northern American market, whether through freer trade or just increased competition. We have some concerns about what this does to Ontario's position vis-a-vis other provinces and vis-a-vis the United States. Certainly, under free trade, companies would be looking very closely at pension indexation as if it were a significant cost as one of the factors involved in where to locate new plants and looking at the cost structure of existing, particularly, long-term plants that may not be new and fully productive. So, I believe that is our long-term position and I am sorry we did not review our '80-81 brief.

Mr. McClellan: Well, again, I am quite sincere in expressing this, a genuine bewilderment about the change of attitude that characterizes presentations from the business employer community in 1987 from the attitude that characterized those same presentations in 1981 and 1982.

Mr. Woodruff: I do not have the same recollection that you do and I do not have any specific recollection in my mind, except that we have been unalterably opposed to indexation from the beginning. And I do not recall being all that upset about the provisions or the submissions that were made otherwise. Do you have something there that says that the Chamber did support it because I find that...

Mr. McClellan: I was going by recollection and I am not sure about the position of the Chamber.

Mr. Woodruff: One of things I think you should think about is that industry itself has not worried about this kind of pension legislation until recently. The Chamber is not industry; it is a representation of some people in the industry and some people are not supportive of these things. They do not think about them. They are too busy running their business until something like this comes up and becomes a real problem.

I have been active in this area for a long, long time because I know exactly what our problems cost us; I know what we are getting into; and I see the real harm that is coming out of legislation like this to people who have very good pension plans now and are going to be driven out of them. At the same time, you are doing nothing for the people that have no pension plans. And that, to me, is a dichotomy I cannot understand. Good is not good enough, but nothing is okay. That just is not sensible.

Mr. McClellan: My understanding of your position is that you are even more opposed to expansion of benefits under the Canada Pension Plan --

Mr. Woodruff: No, I am not. That is not my position whatsoever. I was glad to see --

Mr. McClellan: That is not the Chamber of Commerce's position?

Mr. Woodruff: I said at the beginning the Chamber is made up of - you said 60,000 people - 59,500 are different-minded. Good heavens, how many of you in the Legislature all think the same? It certainly does not seem that to me from the outside; there are a couple of hundred of you. Think of business as 60,000.

No, I think that the Canada Pension Plan expansion is the way to go if you want to get what you are looking for. That would be for everybody. That would be something that is easily --

Mr. McClellan: Is that the position of the --

Mr. Woodruff: I do not think it is the position of the Chamber.

Ms. Wakefield: That is certainly not the position of the Ontario Chamber and never has been.

To address your point with respect to the Select Committee in the early '80s. There was never a consensus amongst business that we should move ahead with inflation indexation, counter to your suggestion. And certainly, there was never any agreement on the excess interest approach.

As I am sure you are aware, there are many problems with that. I am not an actuary, to be able to comment specifically, but that has never been a subject of agreement or commonalty amongst interested groups.

Mr. McClellan: Well, my recollection is somewhat different, and I do not want to be disputatious, but there was not the kind of opposition to the notion of trying to find some way of protecting the private sector pensions from the ravages of inflation that is manifest in 1987.

Ms. Wakefield: Obviously, if I may interrupt --

Mr. McClellan: I do not understand what has intervened except the discovery of the possibility of pocketing pension surpluses, which was discovered, as you know, in the United States in the early '80s and then moved into Canada in mid-'80s.

Ms. Wakefield: Obviously, your discussion in your back rooms and cabinet rooms were different from those in business --

Mr. McClellan: I am talking about the presentations that were made here.

Ms. Wakefield: If we may --

Mr. Woodruff: Why do we not talk about the presentations today. That is five years ago. A lot more people in business have learned a lot about what is intended--

Mr. McClellan: What you are saying --

Mr. Woodruff: --and they are certainly getting a lot closer to what the problems are.

Mr. McClellan: What you are saying is that it is fine if a pensioner who retired in 1971 has a purchasing power of thirty-three cents on the dollar or somebody who retires in 1986 will have the purchasing power of fifty-five cents --

Mr. Woodruff: I think it is a lot better for them to have that than none. And what you are allowing right now is that some have it and some have nothing. I do not think that it is our responsibility, as industry, to take care of inflation. What we need to do is promise one thing or the other. We can promise a defined benefit plan; we can promise to put so much money away.

You are going to screw up the defined benefit plan and so people are going to go to putting so much money away. They may be able to get some inflation protection from that, they may not, but industry cannot afford to write blank

cheques.

You have talked about free trade. My industry is already in free trade. We have got absolutely no protection against American products coming in here. Our margins are so low that we are making less than bank interest in the half of the last dozen years. We are in trouble. The last thing we need is to have 5, 6, 7 per cent addition on our salary bill. We may not be able to have the jobs. We may solve your pension problem that way. You are trying to put a monkey on our back that you are causing by spending too much money as it is.

Ms. Wakefield: Understand, as well, that by introducing inflation indexation - mandatory inflation indexation - you, in effect, drive a wedge in society. You increase the pensions of the relatively lucrative pension plans while doing nothing to help the 60 per cent of Ontario employees that do not have pensions. I understand it is even a greater proportion that do not have defined benefit plans.

If I may suggest, I think your focus should be on encouraging employers voluntarily, certainly, to offer pension coverage for employees, rather than making the rich richer and the poor poorer.

Mr. McClellan: Well, the reality is -- and I am talking about the Chamber's official position and then I will conclude -- you are opposed to expansion of public sector plans which have universal coverage and which could provide a decent standard of living if benefits were increased under Old Age Security and Canada Pension. You are opposed to that because you say, "We cannot afford that."

You are opposed to inflation protection from private sector plans because you say, "We cannot afford that." The alternative is what we have, which is welfare programs, guaranteed income supplement, and GAINS for something in the order of 500,000 people in this province. And that is the effective proposal of the Ontario Chamber of Commerce. Let our retired citizens go on welfare programs.

If you think that that is going to be an acceptable solution in our society, you are as mistaken in 1987 as you were in 1971, when you spoke out about and against unemployment insurance; as you were in 1951, when you spoke out about and against old age pensions; as you were in the 1930s, when you spoke out against the proposals of the Bennett Government.

Ms. Wakefield: The alternative that I just mentioned, and which I reiterate, is that you encourage employers to voluntarily offer pension coverage.

Mr. McClellan: Thank you, Mr. Chairman.

Mr. Chairman: Any other questions? Thank you very much.

Mr. Sanderson: Thank you very much.

Mr. Chairman: All right, sir. Did you want to conclude, Mr. Sanderson?

Mr. Sanderson: I really think we have covered most of the points with respect to indexation.

My only conclusion is that if we do move towards full indexation of private plans, aside from creating two levels of society -- one with indexed pensions and one with no pensions -- somebody is going to have to pay, whether it is consumers, firms, employees, or industry at large. And my concern is that the real payment will be in loss of jobs as Ontario loses its competitive position.

Mr. Bernier: Mr. Chairman, in view of the fact that that Section is not in the Bill, maybe the Minister would like to tell us what the plans are in the situation.

Hon. Mr. Kwinter: Well, if I can just recap very briefly, and I have said this many times, the idea of indexing pensions is one that, from a theoretical point of view, no one can really argue against. It is a very desirable thing to do, to make sure that the promise that is made, let's say in 1987 to 1999, when someone retires, that they have the same buying power.

Having said that, and we have said publicly that we are committed to that. I have also heard not only the Chamber but gentlemen like Ultramar are saying, "We cannot afford it." And what we have done is we have put together a Commission made up of Professor Friedland, Mr. Cliff Pilkey, Mr. Jackson to say, "It is the desire of this Government to implement mandatory inflation protection."

There is no doubt that there is some concern because no one can give me an answer. As I said before, in 1984, the then Treasurer, the Honorable Larry Grossman, stated that his government was committed to mandatory inflation protection at the 60 per cent level. In January of 1985, he said, and I can quote, because I have the newspaper article, and it says:

"Grossman offers pension reforms but no indexing."

"Ontario will introduce major pension reforms this year, but the area of great concern to

most pensioners, protection from inflation, won't be part of the package. Treasurer, Larry Grossman, said."

And he went on to say:

"Because disagreements between the provinces and strong opposition from the private sector have forced the postponement of Ontario's proposal to index private pensions."

So, what I am saying is that every party, I think, has gone on record as saying they are in favour of mandatory inflation protection. My concern is, exactly the concern that was expressed today: You may get it, but you will have no pension plans to index. Because what industry will do is, they will either go to a defined contribution plan or they will refer back, to go to a saving RRSP, where the employees will have as much as they have now with greater flexibility and what we are going to do is destroy the system.

So, what we have done -- and we have heard the stories, and we have heard the arguments, and I have had the questions in the house -- we have said, "Let's get together a group that represents all of the parties that are going to be effected and let them take a look at it. And let them come back to us and say, 'this is what you should do'." And they come back and say, "We have looked at it and it makes no sense and that you should abandon your policy even though you are in favour of it. Or this is what you should do at this level." 60 per cent may not be the number, it may be 30, it may be 80, whatever it is. But let them, at least, look at it because what is happening is that everybody is using a very broad brush technique and they are saying, "It is only going to cost 1 per cent of payroll."

Well, we have heard cases where that is not the case. It may be there may be cases where it will cost 1 per cent, but you cannot take the lowest common denominator and apply it to everybody because you are going to do some irreparable harm.

The main thing that I feel that we have to do is, before we make that determination, we have to have the facts. We have to know what the impact is going to be and what is it going to cost us. And we do not know that. All we have are some vague ideas that, yes, we do, it is 1 per cent of payroll.

Well, I have met with industry; and I have met with the Chamber and their group; and everyone says, "At 1 per cent, that is something we can look at, but we do not believe it. You prove to us that it is 1 per cent."

That is one of the charges that I have given to that Commission. Come up and tell us what it is going to cost? But rather than wait until that happens -- because it is going to take them some time, they are busily working at it -- there are a lot of the things in Bill 170 that I think are critical and that the workers in Ontario should get.

There are concensus figures. There are things that we have done and things that they are entitled to. And rather than hold up the passage of the Bill 170 -- and that was one of the reasons why were delayed. I was looking to see if there was some way that we could do it. And we got to the point that no matter how we looked at it, we talked to the treasury people, we talked to industry, and we talked to the actuaries, and they all said the same thing, "We really do not have figures that we can give you that are definitive, that can allow you to make that determination."

We held off as long as we could, but I really think that we are doing the workers a disservice by holding off on Bill 170. So we went -- and we knew there was going to be some political opposition and we got it -- and we decided: Let's deal with the mandatory inflation protection and the surplus question sperately because it is very contentious, and, notwithstanding that there have been representations made here, today that say that they should be treated separately.

And the point I was trying to get out of organized labour yesterday, is that if you have the promise -- and we are talking about the promise which is really what pension benefits deal with -- if you have the promise and if you have it indexed against inflation, then what happens to the surplus?

One is tied to the other, because if you have the indexing it effectively will remove the surplus. I think that those two issues should be separate and that is what the Commission is looking into.

To just take it now and say, "Forget about the Commission. We do not really care what they say. Our mind is made up. Do not confuse us with the facts. Go." I think we are doing a disservice because I defy you to tell me authoritatively what the cost is going to be to every pension plan in this country, in this province, on mandatory infaltion protection. And you cannot.

All you can say is, Well, the figure that we have, that I recall, somewhere I recall it is 1 per cent or whatever it is-- Or, no, as a matter of fact I have heard members of your party, the leader of your party say it will cost nothing, which is another area of his voodoo economics.

I can tell you that what we have to do is, we have to come to a determination of what the costs will be and what the impact will be because we have a situation in Ontario where only 38 per cent of--

The mere fact that that has not been implemented should tell you something.

Mr. McClellan: Time to leave Ontario.

Hon. Mr. Kwinter: It should tell you something, the mere fact that 38 per cent of the employees in Ontario are covered by private pension plans. And what you are doing -- and the case has been made very eloquently -- the rich are going to get richer and the 60 per cent some-odd that have no pension coverage are going to be sitting there like a kid with his nose pressed up against the candy store, watching an enhancement of existing plans with nothing being done for them.

Mr. McClellan: You should be on this side with the Chamber of Commerce not up there. Why do you not come down here and join the Chamber of Commerce Delegation because you are just parroting their line, parroting their objections, and parroting their argument.

Hon. Mr. Kwinter: Not at all.

Mr. McClellan: Save it for the campaign.

Hon. Mr. Kwinter: They have said that they are opposed to indexing; I am saying we are in favour of indexing.

Mr. McClellan: If you want to make an election speech save it for the campaign.

Hon. Mr. Kwinter: Listen, when you make your speech you are obviously gearing it to some constituency. I am putting forward the position of where we are. I was asked to say what is the government's position. The government's position is that we are favour of mandatory inflation protection --

Mr. McClellan: Your position is exactly the same as the Chamber of Commerce.

Hon. Mr. Kwinter: Does that mean that we have to have a position that is totally different from anyone else in Ontario?

Mr. McClellan: Just as long as we are clear, then, that you have a valuable ally in government.

Hon. Mr. Kwinter: The point that I am trying to make

is that there is certainly no definitive answer as to what the cost is going to be.

Mr. McClellan: That is what the Chamber said.

Hon. Mr. Kwinter: Well, that is fine, and others will say the same. It was not just the Chamber, we have had other people come in and say the same thing.

Mr. Woodruff: If you would like to guess at the cost why do you not ask the Treasurer to see how much it would cost to index long-term government of Ontario bonds. So that the people that buy those bonds get the same purchasing power, the same promise that they get out of their money, when they have bought the bonds. Find out how much that will cost you. There is a good way to find out.

You have got exactly the same situation there as you have got with pensions. Why are you taking money from people who invest in government bonds and not indexing those bonds to protect them against inflation?

Now, I think that is a terrible thing to do. I have watched what has happened to Brazil who indexed everything and you can see what it has done to their economy. It has brought them to their knees twice in that last twenty-five years.

Indexing is a terrible thing to do. But you can do it on bonds and take care of the investors by looking after them, just the same way you are trying to look after other people. All with somebody else's money. That would be with yours, and yet you are not doing it and for a good reason. And it is sure going to cost more than 1 per cent of the cost of those bonds I can tell you. 40, 50 per cent, for long-term bonds, I would not be surprised.

Mr. Chairman: That having been said...

Ms. Wakefield: If I may just close for the Ontario Chamber.

Mr. Chairman: I obviously should have set more aside for these Chamber people. Mr. Sanderson attempted to close twenty minutes ago. Try again.

Ms. Wakefield: Just to respond. As we have said in our submission, we urge you not to amend Bill 170 now to include inflation indexation. We think it is responsible to fully review the issue and it would be unwise to hastily amend the current Bill.

Mr. Chairman: The next presentation is from Towers, Perrin, Forster & Crosby. Mr. Bharmal, and Mr. Lee.

Mr. Bharmal: Thank you.

Mr. Chairman: Please proceed.

Mr. Bharmal: We very much appreciate this opportunity to address the Committee today on this very important matter of pension reform.

Mr. Chairman: And you are?

Mr. Bharmal: Let me just take a few minutes to introduce ourselves. We represent Towers, Perrin, Forster & Crosby, as you said, TPF&C for short. We are the second largest actuarial benefits consulting firm in Canada. We have been consulting in the design, funding and the administration of pension plans in Canada for nearly 50 years.

We have been active participants in the pension reform process. We have over 200 actuarial pension plans in Ontario, mostly major corporations in the various industry and public sectors. We have nearly 150 employees in the Toronto office, 25 of them fully qualified actuaries. And we also have fully staffed office in Montreal, Calgary and Vancouver.

My name is Shiraz Bharmal and as the national pension's practice leader of TPF&C I have the responsibility for monitoring social and legislative developments in the pension area. With me on my right is Doug Lee, who is a vice-president and a senior actuarial consultant, and he is also the manager of our Toronto office. Our biographies are included in the written submission that you have with you at the end.

In our overall comments, though, we will highlight some fundamental characteristics of private pension plans in Ontario. And we will then summarize our views on some major issues relating to pension reform. Time will not permit us to discuss all the issues and concerns included in our written submission, but if there are any questions later on that you have about our submission we will be pleased to respond.

Let me then review what we believe to be the fundamental characteristics of private pension plans in Ontario.

First, pension plans are voluntary undertakings in Ontario. There are no mandatory requirements to have a pension plan at all. In such a voluntary environment legislation should be limited to ensuring that the voluntary pension promises made by employers are in fact honoured and understood.

Secondly, by far the largest number of participants belong to defined benefit plans. Under a defined benefit plan the employer undertakes to provide a certain level of retirement income. He takes the risk of financing that level of income after taking account of any required employee contribution. And I might add that in the private sector nearly half the plans are non-contributory.

The plan is, therefore, a benefit plan and forms a part of the total compensation package. It provides protection to employees and is akin to such other plans as death benefits and disability income benefits. Such a plan is not by its very nature a deferred wage contract although it may effect the remaining sources available for compensation dollars.

However, the essential point is, that the sponsor is responsible for the continued financial viability of the plan and that applies in good times, like now, when there are surpluses, as well as in bad times, when there are deficiencies, as was the case in the mid to late 1970s.

The third fundamental point is, that as a society we have chosen to provide a basic safety net of government pension and rely upon the private sector to provide enhanced pensions beyond this level. In order to encourage employers tax incentives are provided.

Bearing in mind the voluntary nature of pension plans, we must not make pension regulation so onerous as to defeat our central objective of expanded and better pension coverage. And therefore, the pension standards must take account of the voluntary and the employment related nature of pension plans. They must be simple to administer. They must establish only minimum standards. And they must give proper recognition to the risks assumed by sponsors of defined benefit plans.

Above all, legislation should not be retroactive. Retroactivity would change the rules in midstream and alter the nature of plan sponsored contract unilaterally without any remedy. And we are therefore pleased with the general thrust of Bill 170 which is non-retroactive.

Let us now turn to some general issues. An issue that has been the subject of intense debate recently is that of mandatory inflation protection. The needs of retirees to be protected against the increasing cost of living are undeniable and well documented.

Many employers, therefore, provide periodic updates to their retirees on a entirely voluntary basis. Among large employers this practice of ad hoc adjustments is widespread. You will see from the charts provided in our written submission -- and they are just after page 11 in the written

submission -- nearly 80 per cent of the 251 employers included in the TPF&C benefits data bank who sponsor defined benefit plans have provided inflation adjustments in the past. The data reflects practices of large non-union pension plans in Canada.

In addition, many employers regularly negotiate increases for retirees during collective bargaining. This system of ad hoc updates is consistent with the voluntary nature of pension plans and should be encouraged. It is cost effective as it can be designed to meet the financial circumstances of the plan sponsor. It is flexible and can be tailored to meet the needs of employees in an optimum way. For example, more of the available resources can be directed to those who are retired the longest and who need the greatest protection.

In contrast, a mandatory system imposing automatic indexation would be extremely costly to many plan sponsors, especially if it is made retroactive. Whereas ad hoc increases need to be financed only after they have been granted, automatic increases will require pre-funding and accounting not only for current retirees, but for future obligation to current, active employees.

Automatic adjustments would also deprive plan sponsors of the flexibility in the timing of the adjustment which is necessary to cope with adverse economic times. In the face of these cost increases, in addition to other costs that have been imposed by Bill 170, many plan sponsors may be forced to pass on the cost to their employees through reduced benefits.

Employers who are not in a position to assume the open-ended risk of inflation may feel that they have no choice but move to many purchase plans; and thereby pass all the risks to employees. Some may be faced with the unpalatable option of terminating the plan altogether. And in the end it will be employees who will end up bearing the cost of mandatory inflation protection. Also, a mandatory indexation provision would reduce the incentive for the establishment of new defined benefit plans.

There are other unfortunate impacts of mandatory indexation. First, it will interfere with the collective bargaining process. It might even make it more costly if bargaining agents do not recognize the cost of indexing as part of the negotiated package.

As has been said before, private pension plans are not monolithic, they vary a great deal in their form and generosity. Automatic indexation would have a paradoxical effect. It will add the greatest cost to most generous plans and sponsors of money purchase plans; and those that do not have any plans at all will not be effected.

I might note parenthetically here, that conspicuous by its absence has been the requirement that money purchase plans, saving plans, RRSPs, would be required to be taken in the form of indexed annuities. And our experience is, when such an option or such requirement is available the utilization is very, very low.

Trustees of multi-employer plans who have limited access to employer contributions may have to reduce benefit levels to accommodate mandatory inflation protection.

The next issue we would like to address is that relating to surplus ownership. As already observed, under a defined benefit plan the risks associated with investment return, the ultimate benefit amounts, and timing of retirement all fall upon the plan sponsor. If the plan sponsor could forecast these elements exactly, the sponsor would fund the precise amounts required and there would be no surpluses and no deficiencies.

However, since these factors are unpredictable, a plan sponsor usually adopts a prudent stance and includes margins in their funding levels. This is very important because the security of the earned benefits of the members, the employees, is effected by the funding level. It is also important because if there are deficits the law requires plan sponsors to fund the deficits over a very short period. Also, some plan sponsors wish to make an advance provision for the future improvements such as the ad hoc adjustments that I talked about earlier.

Actuarial guidelines and regulatory authorities also require margins.

So far this conscious bias towards over-funding has not been a problem because the plan sponsors have felt secure in the understanding that they retain the ownership of any excess funds. If laws are changed to alter this situation, plan sponsors may act to adopt what we term "lean and mean funding", thus reducing the security of earned benefits.

Worse still, some plans may be wound up in order to recapture excess funds. And employers without plans may be discouraged from establishing new plans. If ownership and utilization of surplus is curtailed, it would only be fair that the plan sponsors be given the option to reduce the benefits when deficiencies occur instead of having to fund them.

Turning to other matters now. Bill 170 contains a provision which purports to correct a perceived problem of discrimination on the basis of marital status. Section 54 requires that if a plan provides for a joint and survival benefit to a married person, an increased benefit of

equivalent value must be provided to a single employee on some arbitrary actuarial basis which assigns an assumed spouse with an assumed age to that single employee.

This provision is absurd and in direct conflict with another provision of the Bill which requires married employees to elect a joint and surviving spouse option. It is also in conflict with the socially desirable practice of providing family benefits such as greater life insurance and health coverage to married employees. It conflicts with the provision of the Canada and Quebec pension plan which provides spousal benefits, and it conflicts with income tax provisions which provide favourable treatment to family units. This provision must be removed especially because it would discourage plan sponsors from providing subsidized joint and survival options.

We have concerns about requirements to provide pre-retirement death benefits when they can and for the most part are more effectively provided through group life insurance programs. We have concerns about the 50 per cent minimal employer cost rule, which is arbitrary and inconsistent with the basic nature of the defined benefit plans; particularly, when there is no similar requirement being imposed on many purchase plans. Detailed comments, as well as comments about certain other technical issues are included in our submission.

We believe that if the law is cognizant of the fundamental characteristics of private pension plans, that we have discussed earlier, it will lead to an environment that is hospitable to the continued growth of pension plans. If legislative requirements are made too onerous they will frustrate the desirable social objectives with more and better private pension plans.

We will now be pleased to entertain questions, unless you want us to review some of the technical areas in our submission.

Mr. Chairman: Thank you. Questions? Mr. McClellan?

Mr. McClellan: Thank you, Mr. Chairman.

You indicate in the back of your presentation that one of the services that Towers, Perrin, Forster & Crosby provide are total compensation services.

Mr. Bharmal: That is right.

Mr. McClellan: I would assume you would have some experience in working with employers as they prepare for collective bargaining?

Mr. Bharmal: We do indeed.

Mr. McClellan: Have you ever been involved in collective bargaining where the cost of the employer's share of a pension plan has not been part of the total piece of pie that the company is prepared to discuss?

Mr. Bharmal: We have been involved in cases where that has been the case, and in cases where it has not been the case. The fundamental point, though, is that when the Union is negotiating a particular package they are trading off current cash with a protection plan. And something like a pension plan is, as I said, akin to long-term disability benefit or a short term disability program. And the idea is not to sort of defer the cash for consumption in the future, but to trade in the cash instead of a protection plan.

Mr. McClellan: People make choices about what share of the pie they will take as take-home pay, and what share of the pie they will take, the employees, as deferred wages or --

Mr. Bharmal: I think --

Mr. McClellan: Benefits?

Mr. Bharmal: -- the choice that the people are making is that instead of picking only cash as their compensation they would rather have some cash and some security plans.

I am going to give you an example. Quite often, as I said, disability income benefits are part of the package. Now, a very minute group of people are going to benefit from that long-term disability benefit; and therefore, you are not really exchanging cash, you are exchanging insurance, you are exchanging protection.

Mr. McClellan: Well, no, you are making a choice between whether to take the share of the pie that is available in a given year, in the form of take-home pay, increased take-home pay, or in the form of something that is deferred.

Mr. Bharmal: Yes, you are right to some extent, but the point I am making is that --

Mr. McClellan: No, you --

Mr. Bharmal: -- the relationship is not as direct as you are making out because nobody at that point knows the cost of the protection plans. For example, nobody can tell what the long-term disability benefit is going to end up costing. You are making choices not in terms of dollar for dollar; you are making choices in terms of the quality of the total benefit package.

Mr. McClellan: You are telling us that you know of companies that have sat down and agreed to increase contributions to a pension plan or enrichments to a pension plan without knowing what the costs of those were and relating those costs to other items that are on the table?

Mr. Bharmal: The interesting thing is that the companies never knows what the costs are going to be. All they have to go by --

Mr. McClellan: But there are estimates?

Mr. Bharmal: -- are some actuarial estimates and quite often those estimates are wrong. For example --

Mr. McClellan: But they are taken --

Mr. Bharmal: They are taken into account.

Mr. McClellan: Sure, of course, they are.

Mr. Bharmal: Of course, they are.

But the point is, that when those are taken into account, the risk for them is also taken into consideration. For example, lots of bargained defined benefit plans developed deficiencies in the late '70s and the employees did not go back to the bargaining table and say, "Sorry, we are going to reduce your benefits because we have developed the deficits."

Mr. McClellan: But it is not just a question of the actual benefit that is deferred, there is actually a defined cost. Whether it is accurate or not, there is a defined cost which is taken off the table, taken out of the wage package, put into something else; and I do not see how, that being the case, you can describe that as the property of somebody other than the person to whom it belongs, which is person who decided to give it up in the form of take-home pay and put it into something else.

Mr. Lee: Maybe I could comment on that. When the exchange is made between taking a take-home home pay at this point in time for a benefit, there is a change in the form of receipt of that particular dollar. And it now is a promise to pay a benefit; it is not a deferred wage at that point because, in fact, if you think about it, that actuarial estimated cost is based upon a lot of averages, so that any one individual may be a winner or loser as it relates to the benefit.

Again, to pick up on this the theme of disability or group life, an individual exchanges the compensation in order to have a larger group life benefit. If that person is unfortunate to die they receive a very large sum of money

which has no relationship at all to the benefit or the cost of that benefit.

Mr. Chairman: Any other questions?

Thank you, gentlemen.

Before we started these hearings we had some discussions as to whether or not we would travel to other places. We decided that we would not, but that if somebody needed assistance to make a particular point with us that we might be sympathetic to that.

We have one from a person representing the Inco pensioners, and one representing the Ottawa-Carleton Pensioners' Association. I have two motions, both the same, one by Mr. McClellan and one by Mr. Guindon that the Committee reimburse the chap from Copper Cliff and the chap from Ottawa for the cost to travel to Toronto to appear as a witness on Bill 170; the cost not to exceed the amount of an economy class return air ticket. Agreed? Agreed.

See you on Monday.

The Committee adjourned at 3:45 p.m.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

PENSION BENEFITS ACT

MONDAY, APRIL 13, 1987

Morning Sitting

STANDING COMMITTEE ON GENERAL GOVERNMENT

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Substitutions:

Miller, G. I. (Haldimand-Norfolk L) for Mr. Fontaine

Polsinelli, C. (Yorkview L) for Mr. Offer

Clerk: Deller, D.

Staff:

Anderson, A., Research Officer, Legislative Research Service

Kaye, P., Research Officer, Legislative Research Service

Witnesses:

From General Motors of Canada Ltd.:

Wakefield, T., Senior Staff Assistant, Government Relations

Stewart, N., Director, Government Relations

Wagoner, R., Vice-President, Finance

From the Ministry of Consumer and Commercial Relations:

Kwinter, Hon. M., Minister of Consumer and Commercial Relations and Minister
of Financial Institutions (Wilson Heights L)

From the Consumers' Association of Canada--Ontario:

Delaney, T., Member, Economic Issues Committee

From the Toronto Civic Pensioners' Protective Association:

Batchelor, G., President

Woadden, R., Director

Chepswick, J. P., Vice-President

From Peat Marwick and Partners:

Dutka, R. J., Partner

Van Riesen, G., Manager

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Monday, April 13, 1987

The committee met at 10:03 a.m. in room 228.

PENSION BENEFITS ACT
(continued)

Consideration of Bill 170, An Act to revise the Pension Benefits Act.

Mr. Chairman: We will commence the hearings again on Bill 170. The minister would like to make a few remarks before we start.

Mr. McClellan: I am sorry, but I thought we had an agenda. I assume what the minister wants to do is to try to retrieve the position he blundered into on our last sitting day. If we want to open the committee sittings up for debate as to what our various positions are on the matter, then I think that is an extremely discourteous thing to do to the eight deputations that have scheduled themselves to present before us.

Also, I do not have a copy of the Instant Hansard, which is not yet available, so I simply register my own feeble protest about disrupting the proceedings. I assume the minister was brought into the Premier's office and caged on Thursday morning and he is trying to bail himself out. I resent his distorting our schedule to try to accomplish that. Maybe I am anticipating.

Mr. Chairman: Minister, you are representing your party here. We have a quorum, but you are both minister and the Liberal member here. I understand the point being made by Mr. McClellan. The transcripts are going to be available some time today. Do you know when?

Clerk of the Committee: No. I will find out.

Mr. Chairman: I guess the minister will have an opportunity to say what he might otherwise say in the next few moments at the completion of the General Motors of Canada presentation.

Mr. McClellan: I came here to listen to General Motors.

Mr. Chairman: Would it be all right if we proceed and you will get your point on the record when this presentation is over?

Hon. Mr. Kwinter: That is fine.

Mr. Chairman: From General Motors of Canada we have Mr. Stewart, director of government relations.

Ms. Wakefield: We also have Rick Wagoner who is our vice-president and general finance manager. Mr. Stewart is on the end. This is Maureen Kempston-Darkes who is our general director of corporate affairs, and I am Tayce Wakefield, senior staff assistant, government relations.

Mr. Chairman: Please proceed.

GENERAL MOTORS OF CANADA LTD.

Mr. Wagoner: We are pleased to have a chance to address the committee today and we would like to start with a formal statement.

A major crisis looms for the North American auto industry as we approach the end of this decade. North American supply capacity is projected to exceed 15 million units per annum while demand should be limited to 12 million units. This excess capacity of three million units is the equivalent of the output of 10 assembly plants. The federal government predicts that this overcapacity could result in the loss of up to 40,000 Canadian automotive jobs, primarily in Ontario. As vehicle manufacturers are forced to close assembly plants, this figure could go even higher if Ontario is no longer a competitive location to build vehicles and components.

Assembly plants across North America compete with each other for the opportunity to build vehicles. A key component in the competitiveness of each plant is its labour costs. General Motors of Canada employs more than 40,000 people in Ontario, and at \$1.6 billion in 1986, the GM of Canada payroll was almost 10 per cent of total sales.

Since 1980, GM of Canada has invested or committed to invest nearly \$7 billion in Canada, most of it in Ontario, to put in place the building blocks for the future. One of the reasons General Motors has pursued such an aggressive investment program in Ontario is this province's superior competitiveness with other North American jurisdictions in labour costs.

General Motors of Canada enjoys a significant advantage in per-hour labour costs over American assembly plants. Much of this is attributable to exchange rates. However, since the beginning of this year, the strengthening of the Canadian dollar has narrowed the spread between US and Canadian hourly automotive wage rates by about \$1 per hour. Thus, we cannot rely on exchange rates alone for our competitiveness.

General Motors of Canada currently has more than 11,000 pensions in pay. We provide a noncontributory defined-benefit pension plan for all our hourly rate employees. This plan currently provides a flat benefit of from \$22.05 to \$22.80 per year of credited service. The pension plan also provides for an early retirement supplement of \$18 per month per year of credited service, up to a maximum of \$540 per month, as well as a voluntary retirement at any age with 30 years credited service with a guaranteed monthly benefit of \$1,205 for current retirees.

GM of Canada salaried employees' retirement program consists of a part A plan that is generally the same as the hourly rate pension plan and an optional contributory part B plan.

Pension benefits continue to be an important item of negotiation for General Motors of Canada and the Canadian Auto Workers.

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With regard to Bill 170, we have a few comments we would like to pass on.

General Motors of Canada recognizes the need for reform of the legislation governing employer-sponsored pension plans in Ontario. Although we will incur significant cost increases, General Motors of Canada supports the thrust of Bill 170 to provide the key elements of the federal-provincial

pension consensus including enhanced portability, greater disclosure and earlier vesting.

The cost increase to General Motors of Canada of Bill 170 is actuarially estimated at \$8.1 million annually or more than a 15 per cent increase over current funding requirements. This represents a six-cents-per-hour increase in hourly labour costs based on actual hours worked in 1986, and \$500 for each salaried employee each year. This increase amounts to more than \$11 per vehicle produced by General Motors of Canada.

While we are in support of the thrust of Bill 170, we offer several suggestions to improve the bill that are covered in our written submission and will not be reviewed in detail right now.

In summary, GM of Canada supports the government of Ontario's initiative enhancing private pension plans and we believe Bill 170 should be passed into law as quickly as possible with only the minor amendments we mention in our submission.

With regard to inflation indexation, we understand there has been some discussion of amending Bill 170 to include mandatory inflation indexation. This was not an item of the federal-provincial pension consensus and should not be included in Bill 170. The task force established by the Ontario government to review the issue should be allowed to complete its mandate.

Inflation indexation would prove extremely costly to General Motors of Canada and would eliminate our competitive advantage in labour rates versus General Motors' American plants. We believe the bottom line net impact would be a substantial loss of assembly and parts production jobs in the key automotive sector in Ontario.

Actuarial estimates indicate that the cost increase over General Motors of Canada's current plan funding requirements of 100 per cent inflation indexation is \$321 million in the first year, with similarly massive cost levels throughout the life of the plan. The \$321 million is a cost increase over our current plan of 611 per cent or almost 20 per cent of total payroll costs for General Motors of Canada's more than 46,000 employees. Based on its 1986 Canadian car and truck production, \$321 million represents a cost increase for GM of Canada of \$444 per vehicle, or \$532 when federal and provincial sales taxes are applied.

Cost increases over current plan requirements for 60 per cent inflation protection are estimated at about \$140 million or an increase of 265 per cent. This represents an increase of \$193 per vehicle, \$1.42 per hour for every hourly worker or \$7,500 per year for every salaried employee.

Based on 1986 sales of \$18.5 billion, General Motors of Canada was once again the largest company in Canada. However, our net profit of \$418 million would have been virtually eliminated by the cost increase of inflation protection of pensions.

One out of every six jobs in Ontario is directly related to the automotive industry. Our industry is highly cyclical in nature, but General Motors of Canada has posted a net loss in only one year since 1980. If we had been required to provide 100 per cent inflation protection in every year since 1980, we might have posted losses in as many as five of the six years.

North American vehicle producers are in a competitive battle with

offshore producers with extremely low labour rates. Inflation indexation of 100 per cent is projected to increase the compensation levels of our employees by about \$3.57 per hour or almost \$13,000 for each salaried employee each year.

New automotive producers from offshore locating assembly plants in Canada already have a substantial cost advantage over the North American producers that have been committed to this country for more than 70 years. The new producers have much younger work forces and no existing retiree population. Thus, their pension funding costs are substantially less than the traditional North American producers' costs. They also retain the flexibility to offer defined-contribution pension plans or some other form of retirement income because they have not yet established their plans. Avoiding the burden of indexation would only further widen their cost advantage at a time when North American producers are competing for their economic survival.

In the virtually no-growth North American auto market, the sales gains of the offshore producers will be at the expense of the North American manufacturers. Unlike the offshore producers, the North American assemblers source from Canadian and United States suppliers. It is estimated that there are two to three supplier jobs for each North American automotive assembly job. Any unnecessary cost advantages for the offshore producers will place these North American jobs in jeopardy.

We believe that inflation indexation will widen the gap between rich and poor in our society and will do nothing to help the 60 per cent of Ontario workers who are not covered by private pension plans. Companies such as General Motors of Canada that provide substantial pension benefits to its employees will incur the largest increases as their relatively high benefit levels are further enriched, while workers in other industries with meagre private pension benefits will be significantly less advantaged. The majority of workers in Ontario with defined-contribution plans or no pension coverage at all will be worse off in comparison with other workers. Inflation indexation is a serious impediment to economic equality in our society.

Few organizations will be able to afford defined-benefit pension coverage for their employees if it includes mandatory inflation indexation. Instead, they will provide defined-contribution benefits or no pension coverage at all. Some employers may choose to relocate production to jurisdictions where they can adequately provide for their employees' retirement at a reasonable cost. For General Motors, the decision on which assembly plants to close in the face of growing overcapacity will be directly affected by mandatory inflation indexation.

In summarizing, the many positive aspects of Bill 170 should be implemented into law as quickly as possible. However, we urge you not to amend Bill 170 to include inflation protection. While we do not support the concept of mandatory indexation, we believe the government did act responsibly when it established its three-person Task Force on Inflation Protection for Employment Pension Plans with a one-year mandate to study and make recommendations on this complex issue. This task force can provide focused analysis of the various aspects of these issues, including the cost impact on the numerous types of pension plans and the implications of tax reform. It would be irresponsible for your committee to introduce indexation amendments and Bill 170 without having had the benefit of an in-depth report of the task force.

This concludes our formal comments. Thank you.

Mr. McClellan: The figures General Motors provided on pension

legislation costs are shown on a table. Can somebody from the GM delegation answer a few questions about these figures? Are the projected costs of inflation protection at the three rates shown, 50 per cent, 60 per cent and 100 per cent, the costs of covering future retirees or do these include the costs of covering current retirees as well?

Ms. Wakefield: It includes pensions and pay, as well as future benefits.

Mr. McClellan: What is the base for the current retirees? When you are working out your increased costs, is the base you are taking the pension people received at the time of their retirement?

Ms. Wakefield: No, it is current amounts received.

Mr. McClellan: So that would include ad hoc adjustments to current retirees' pension rates.

Mr. Stewart: To take them to the position they are in now.

Mr. Wagoner: It is based on today's payout level, adjusted for future inflation.

Mr. McClellan: I understand General Motors does negotiate ad hoc inflation increases.

Mr. Wagoner: That is correct. It is part of our regular negotiation process.

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Mr. McClellan: I am sure you will not be surprised that I spent some time talking to some folks at Canadian Auto Workers. They will be making their own presentation here on Wednesday morning; but as a result of collective bargaining, CAW retirees do get regular inflation increases, regular inflation protection.

Mr. Stewart: But they are a matter of negotiation.

Mr. McClellan: Of course they are.

Mr. Stewart: We can only agree to make increases in negotiation years if we have the funds to do it with.

Mr. McClellan: We are interested in looking at what happens to CAW retirees over time because we are talking about the work force of our largest corporation, represented by our strongest trade union.

I understand that retirees who retired in the 1970s--I do not have average figures; they were not available--but it looks like they would be protected up to a level of 60 per cent of the consumer price index. Is that at least a reasonable estimation of the ball-park range of inflation protection that has been granted through collective bargaining?

Ms. Wakefield: That is an approximate estimate, yes. The important point is that it has not been necessarily an automatic thing that has occurred in every year. Certainly, it has been negotiated with our employees.

Mr. McClellan: If I gave you some figures--somebody who retired in January 1974 has had an increase in his pension of 90 per cent; somebody who retired in January 1975 has had an increase in his pension of 65 per cent; somebody who retired from General Motors in 1977 has had an increase, through the collective bargaining process, as an inflation adjustment of 60 per cent.

Mr. Stewart: The key thing to understand, though, is the difference between an ad hoc adjustment and the cost implications of that as we move forward versus the cost implications of mandatory indexation. Under the system of ad hoc increases that we have made, yes, we have in fact made improvements to pensions in the order of 60 per cent of CPI over time.

You have to understand that it is a cyclical business we are in. There are certain years when we are not in as strong a financial shape as others, and in those years we are just not in a position to make the improvements. That is the first thing. The second thing to understand is when we make improvements on an ad hoc basis, we are making an adjustment, making a commitment to our employees and funding it from that point onwards.

That is in total contrast to what would be required under mandatory indexation. We would have to make calculations now about the rates of inflation going out for many years until people retire and then after they retire, the lifespans of those people and funding for that. What that does is impose these massive upfront funding costs for us. When we talk about this \$321 million cost increase in year 1 and similar amounts going forward for many years to come, that is because we have to put all that funding up front in those early years.

That is coincident with the situation that we are in here now of being in the most competitive time in our industry. For us to go through that would be absolutely devastating.

Ms. Wakefield: I--

Mr. McClellan: I do not mean to cut you off but, since this relates to the basic inflation protection you have given to your workers, I understand that in the presentation you made to the federal parliamentary committees studying pensions you indicated--this is information that has come to me at second hand, through CAW, and I may have got it wrong--that between 1973 and 1983 the General Motors pensions increased 82 per cent. Does that sound right?

Mr. Stewart: That looks about right, yes.

Mr. McClellan: This is where I fall off the train. You are telling us that if we have 100 per cent CPI, we are going to have to close down plants. We are permitting an economic Armageddon that would destroy the economy of Ontario.

I do not think that is a fanciful way of describing the kind of impact that you are predicting here when you say things like, "The decision of which assembly plants to close in the face of growing overcapacity would be directly affected by mandatory inflation indexation." At the same time, you have indicated that you have been able, on a cyclical and ad hoc basis, I agree, through the collective bargaining process, to absorb pension increases of the level of 82 per cent.

I am sorry, but for the life of me I do not understand why it is beyond the wit of General Motors, the Canadian Auto Workers, the Ministry of

Financial Institutions and the Pension Commission of Ontario to devise a system of inflation protection that is cyclical, that takes into account ups and downs and does not impose all the costs on a front-end-loaded basis, but actually does provide for inflation protection over time on a rational basis.

Since you have demonstratively been able to afford these kinds of increases in the past, I do not understand why you are predicting the economic end of the world if we do it now on this more systematic basis.

Ms. Wakefield: To illustrate graphically, I can pull up a chart. We had our actuaries do an analysis of the comparison of the difference between ad hoc, which is the lower line steadily increasing, and the acquirement of mandatory inflation indexation.

A substantial proportion of that difference is because of the requirement to fund any obligations within 15 years. We have to understand the difference in those first five or 10 years, particularly in the light of the competitive situation we face. That difference in cost that we take up front is frightening to us at this point, knowing the competitive battles we face. When we have no control over inflation, it is also problematic for us to commit to always being able to provide and track that.

Mr. Wagoner: If I can supplement that, you mentioned 80 per cent and 60 per cent. In fact, the specific percentage depends on the year you start and the year you finish. Over history, you will find that the percentages have varied, and the negotiations basically reflect the tone of the environment as foreseen by the auto industry and the union. It is a negotiated process.

As for your concern about our statements regarding plant closings, I think you are all aware that we have recently announced 10 plant closings in the United States. These were motivated by analysis of the technology level of the plants, the quality levels being produced and, of course, the costs. We are talking here about a potential 20 per cent cost increase versus an assumed level of correction, on an historical basis, of some 60 per cent. We will be sitting down with the CAW in a few months to negotiate our contracts and we will be arguing considerably about issues that have much lower cost than that.

I hope you understand the significance of a one-shot increase like that, particularly in a time period where we are in the situation of spending over \$1 billion this year in capital expenditures. Earnings are under pressure, because we are beginning to see the first hints of this oversupply situation. I am sure you have noticed in the paper almost on a regular basis throughout the last year and a half substantial incentive programs to sell vehicles.

Labour cost is a tremendous input, and a 20 per cent increase off the hand and going into a negotiation process would be a tremendous factor in deciding where we should locate our future production.

Mr. McClellan: I know time is at a premium, Mr. Chairman. Maybe it would be helpful if General Motors were able to provide the committee with information, going as far back as it has data for current retirees, about how many of its current retirees have inflation protection, what the average rate of inflation protection would be for CAW retirees, what percentage of current retirees have inflation protection at what rates, how many are protected to the level of 50 per cent now, how many are protected to 60 per cent now, how many are protected to rates more than that and how many are protected to rates less than that.

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Mr. Stewart: Again, we say that misses the point in the sense that each time there is an improvement it resulted from negotiation, and what we are funding is that agreed-upon improvement. We are funding that over a period of time. What we are not funding for is future inflationary increases, because what will happen is that we will negotiate an increase--pick a year--in 1984, and then in 1987 we will look at it again and we will decide, through our negotiations with the CAW, whether there is room to make a further improvement based on our profitability and other competing objectives that we and the union may have in our negotiations.

The key point, though, is that with mandatory indexation, you are funding what you are going to perceive to be inflationary increases over time, and that is what pounds in the excessive cost. So even if we--

Mr. McClellan: Yes, but you are--

Mr. Stewart: No, let me finish. Even if we provided you with those figures--sure, they are going to show over time that there has been a level of improvement of something in the order of 50 per cent to 60 per cent, but that is historical information. It does not presume what inflation is going to be in the future and it does not require us right now--we have not agreed with our union to fund for inflation going forward, and that is the thing that drives up the cost. No matter what mechanism of indexation protection you want to devise, you are still going to end up funding for inflation, and that is going to drive up the cost in those early years of the plan. That is when we say we can least afford it.

Mr. McClellan: Sure, but the historical evidence, which is the only evidence that counts, indicates that you have been able to afford, if I may say so, very generous levels of inflation protection. I can understand why you are reluctant to take that out of the bargaining process and put it into legislation, but generous levels of inflation protection have not put General Motors behind anybody's eight ball.

Mr. Stewart: But they have done it on an ad hoc basis. That is the key point.

Mr. McClellan: What makes them do it on an ad hoc basis? That is the key point. You have been able to afford to do it. That is my point. You are saying: "Yes, we have been able to afford to do it, but if we are required to do it in the future, it is going to put us out of business. We are going to have to shut down all these plants, lay off all these workers and buy Japanese cars."

Mr. Wagoner: If you look at the historical data, which are all we have, they do tell one story, but I think there is no question that if you look at our inflation-protected earnings at General Motors, we have been heading in the wrong direction for a good long time now.

In fact, with this issue that I have tried to emphasize, the overcapacity situation in North America--which is, by the way, the only profitable auto market among the major ones in the world now--we do not expect the luxury of having the ability to pass on cost increases like pension cost increases in our pricing as we did in the past. We are under much more pressure now to have every penny of cost fully justified and fully committed to improving the quality and output situation. Therefore, to take the past and

project it forward in an industry like ours that is under pressure would be potentially difficult for us.

Ms. Wakefield: Could I draw your attention back to this chart to indicate once again the significant gap between the cost of ad hoc inflation indexing and mandatory inflation indexing. You have to understand that looking at it historically, you track the bottom line; the steadily increasing line is actually in the middle on that. What you are proposing in mandatory indexation is to drive up costs immediately in the order of--you can see the difference on that chart, \$250 million or so--\$321 million for the upcoming years and steadily increasing. That is where we say we have our problem.

Mr. McClellan: That is a good bargaining position, and if you could get away with that at your next round of negotiations with Bob White, more power to you, but it makes an assumption that you are not going to do in the future what you have historically done in the past.

Mr. Wagoner: No, the line on the bottom assumes that we have done the 60 per cent adjustment that you yourself used.

Mr. McClellan: Yes, for the current retirees.

Mr. Wagoner: For all.

Ms. Wakefield: For those upcoming into pensions.

Mr. Stewart: That is the key difference. You can see what we have done historically, and that is the mid-line, and you can see what mandatory indexation does. That is the difference.

Mr. Wagoner: It is also appropriate here to interject the fact that--we mentioned this competitive situation. We have three or four new assemblers here in Canada, assemblers that are not providing the level of content and jobs that we and our North American competitors are. These people have committed to some sort of post-retirement income plans, but they are specifically waiting to see how this legislation comes out before they decide if they go to a defined-benefit or defined-contribution plan.

A defined-contribution plan skirts the whole issue. Therefore, it seems to us what this legislation would do is to load the burden on the companies, like General Motors, which have been most protective of their employees in the past. In that sense, it seems somewhat unfair to us that, essentially, the legislation, as we have said in our analysis, will make the rich richer and, relatively, the poor poorer.

Ms. Wakefield: It seems to me to be a real shame that by legislative inflation indexing, you are legislating winners and losers in the automotive market.

Mr. McClellan: You are taking the same position the minister takes on this issue. You could always advocate a major expansion of our public sector pension programs, the Canada pension plan and old age security, if that was your main concern. The impact of what you are saying is that if business remains intransigent about its refusal to index private sector pensions, then there will be no interest in maintaining private sector pensions.

That is the political reality I think you are not recognizing. That would be fine by me, but people in this country are not going to say, "The

costs of inflation are going to have to be borne by the retirees." People will not accept that.

Mr. Stewart: The problem, Mr. McClellan, is that it is only a small portion of Ontarians who benefit from defined-benefit programs. An organization such as the Financial Executives Institute Canada has done studies that indicate that of its membership, the majority do provide, on an ad hoc basis, significant improvements to the pensions of those people; but what we are talking about is a small group in society, under 40 per cent. It is not doing anything for the people with either defined-contribution programs or no programs at all.

We suggest that the thrust should be to implement into law as quickly as possible the good things that are contained in Bill 170, and then to start to focus on how you voluntarily increase pension coverage to a greater percentage of people in Ontario so that more people can benefit from these things. What you are doing, as Mr. Wagoner said, is making, in effect, the rich richer and the poor poorer. I do not know how you get around that with this kind of proposal.

Hon. Mr. Kwinter: I would like to respond to a comment that was made by Mr. McClellan.

Mr. McClellan: You get to read your statement now. That is why I threw that little tag before you.

Hon. Mr. Kwinter: No, I think what you are doing is misrepresenting our position. I and my government are committed to mandatory inflation protection.

Mr. McClellan: That is not what you said on Wednesday.

Hon. Mr. Kwinter: When you see Hansard, you will see that is exactly what I said. The only difference--in some cases, we agree with General Motors and with the Ontario Chamber of Commerce, but we also disagree with them. We agree with their statement that they do not want mandatory inflation protection included in Bill 170. They want to wait until the task force reports, and we agree with that.

The reason we have that task force is that we are committed to mandatory inflation protection. Where we disagree is that both the Ontario Chamber of Commerce and General Motors have said they are opposed to mandatory inflation protection, period. We are saying we support it, but we do not want it included in Bill 170 until the task force reports. That is our position.

Mr. McClellan: Nobody believes that after your performance on Wednesday.

Hon. Mr. Kwinter: When you read Hansard, if you can read any other interpretation of it, it will be interesting.

Mr. McClellan: You let the cat out of the bag on Wednesday--

Hon. Mr. Kwinter: Only in your mind.

Mr. McClellan: --and now you are running around trying to catch it, but it is too late.

Hon. Mr. Kwinter: Only in your mind and in the mind of one other person.

Mr. McClellan: I know; it is a conspiracy.

Mr. Guindon: How can you be for it and against it?

Hon. Mr. Kwinter: Let me explain that, so you understand. We are in favour of mandatory inflation protection. We are not in favour of including it in Bill 170 until the task force reports, to make sure it can be implemented in the most expedient way that will work. That is the basic difference.

What is happening is that Mr. McClellan's position is: "Do not worry about what the impact is going to be; just put it in. We will worry about it later." What we are saying is that we have a commitment to mandatory inflation protection; we have a task force out there that is looking at the implications and the ramifications; and until it reports, we do not want to include it. Until they report and tell us how to implement it--their mandate is to tell us the most expedient way to do it--we do not want to include it. Once they report, we will address it.

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Mr. McClellan: Sure you will.

Mr. Lane: The first paragraph of the brief, the introduction part, mentioned that, "A major crisis looms for the North American automotive industry as we approach the end of the decade." You talk about "an excess capacity of 3 million units." Is that a fact of life or is there any solution to the situation? Is that going to happen regardless or is there a way around it?

Mr. Wagoner: Our recent action in closing down 10 facilities in North America indicates our belief that it is something we are going to have to deal with.

Mr. Lane: So really when we hear about a new company opening up a new plant, we should not be celebrating all that much?

Mr. Wagoner: That is correct, particularly here in Canada where they have committed to much lower levels of Canadian content than we apply ourselves.

Mr. Lane: Further on in that same paragraph, you are talking about "As vehicle manufacturers are forced to close assembly plants." Apparently what you are saying is that is a fact of life.

Mr. Wagoner: That is right.

Mr. Lane: If inflation indexation is part of the system, that becomes even a greater fact of life, is that it?

Mr. Wagoner: That is correct. We are doing all we can, as General Motors of Canada, to ensure that our plants are competitive from a technological standpoint. We have made some big steps in several plants in improving our quality, and we need to continue in this area. But if you come in and increase my labour costs by 20 per cent up front, in all honesty, it has got to have an impact on deciding what plants should be closed and where.

Mr. Lane: I would like to think that there would be a solution to this overcapacity, but you do not see that?

Mr. Wagoner: If you look at Europe as a good example, over the past five years or eight years you have seen tremendous profitability pressures and the reason is basically what we have here. It is substantial. While the market has grown at a slow rate, the capacity has increased by leaps and bounds on account of various circumstances and the result has been that dramatic restructuring in the industry is going on now. You have seen some plants close there and I think you will see more there.

Now we are moving into a different phase. All these people who have built plants in Europe and in Japan--if you look at their installed capacity versus the domestic market demand, they export over 50 per cent to 60 per cent of what they make in Japan. If you look at places like Brazil, where they are starting now to export to the North American market, everybody is taking this excess capacity that they have and aiming it into North America.

I am not sure if five or six years ago we foresaw the situation that we are in right now, but we are in the battle of our lives right now. We are doing what we can, working with suppliers, a lot more co-operation with our dealers. With regard to the union, we are trying to do what we can to improve our efficiencies in the plant. We are making a lot of investments in Canada because we think we can get the return.

But we have to be honest in saying that we did not make those investments on the assumption that our costs were going to increase 20 per cent because of an inflation indexation for pensions. Certainly, as Mr. McClellan correctly indicated, we have made ad hoc adjustments in the past, but in fact those were part of the negotiating process, part of the give-and-take process, as you know. Second, they were done on a basis that we felt we could afford and, evidently, in a manner that was, at least at that point in time, acceptable to the union.

Our problem with this proposed amendment to Bill 170 including inflation protection is that here we are--and I think Mr. McClellan agreed that we have done a pretty good job, considering everything, in covering our retirees, certainly vis-à-vis the grand majority of society here. Yet we are the kind of people who get hit worst by this bill.

Ms. Wakefield: If I can just add to that, the initiative that concerns us greatly, anticipating high costs from mandatory inflation indexation, is it not only means that you potentially lose substantial GM of Canada assembly jobs, but because we have such high Canadian content levels in our products as compared to the new manufacturers, which probably will not incur the same kind of cost increases from inflation indexation because they have the option to put in place plans that will not be affected, for every assembly job that you lose at GM of Canada, you probably lose two or three parts jobs. What you are doing by adding cost to us and not to our competitors is driving a whole load of jobs out of our society. You are exporting a lot of parts production jobs to wherever the sourcing is for those new plants, which is not generally Canada.

Mr. Polsinelli: Unlike Mr. McClellan, I sometimes have difficulty understanding what I am told are relatively simple concepts. Perhaps the delegation today would help me understand one simple concept.

Members of this committee know that when we are talking, for example,

about Workers' Compensation Board benefits, prior to last year the board used to make ad hoc adjustments to the payout of those benefits. The ad hoc adjustments generally were along the lines of the consumer price index. If you trace the adjustments that have been made over the past 10 to 15 years, they have generally kept up with the CPI.

Last year, our government passed legislation mandatorily indexing the payouts to the CPI. What we discovered--actually, we knew it before we passed the legislation--was that the actuaries at the board advised us that the unfunded liability that the Workers' Compensation Board had almost doubled, to \$5.2 billion. I guess it is tied to what Mr. McClellan said earlier. Since the board had been making the adjustments over the past 10 to 15 years on an ad hoc basis, almost tying them to CPI, once we mandatorily indexed the pensions, the actuaries at the board told us the unfunded liability had doubled.

I would like to see whether I can get the answers to two questions. One, is there, in fact, an unfunded liability, or is this an actuarial fantasy? Is an unfunded liability really created? Is there a present day cash requirement to meet that future contingent liability? How would that affect your plan? Would your plan be in a situation of having an unfunded liability to carry your future commitments?

Second, if that were the situation, how would your added expense be funded? I am not quite sure whether you have answered that. If not, would that be funded through an increase in employer contributions, employee contributions or both?

Mr. Wagoner: As far as I can inform you, based on our current requirements as negotiated with the union and therefore as we perceive our current pension liabilities, we are basically in a funded position, not overfunded, not underfunded. Given the magnitude of the funds involved, which are in the order of \$1.5 billion, as I recall it, we are within a per cent or two of being fully funded.

If you were to come in today and say 100 per cent inflation protection for the future, we would have the kind of liabilities we showed on our chart to correct this shortfall over a period of 15 years. It would be an additional cash outflow to us in the order of \$300 million to \$350 million a year. Why? This is because we do not currently fund to pick up future increases that are not negotiated in our contract. With this law, you would tell us: "Not only do you have to fund what you owe today, but also you have to fund under the assumption that there will be future inflation. You need to put in enough to cover that until the employees retire."

This is basically the reason, or one of the reasons, for our increase in cash out-of-pocket in the order of \$300 million per year.

Mr. Polsinelli: If I may just interject for a second, you are talking about the ongoing additional cash requirements of \$300 million to \$350 million a year. If you look at the plan today, in terms of your existing liabilities, would there be an immediate requirement to meet your existing liabilities? From a funded position, would you automatically go into an unfunded liability position?

Mr. Wagoner: Yes, if the law were passed.

Mr. Polsinelli: If you look at the compensation board, its unfunded liability--if I can recall the figures--went from \$2.5 billion to \$5.2 billion

once the legislation was passed because of the actuarial requirements. Would you be in a similar situation? How much of a shortfall would you now have if legislation such as this were passed?

Mr. Wagoner: We would be in a shortfall. As far as the present value amount that we would have to put in today, I do not have that number. We have assumed, according to what we understand the law will be, that we would correct that shortfall over 15 years. In doing so, that is where the cost, plus the future indexation requirements, would give us \$300 million a year. If we had to pop in the whole amount today, I do not know what it would be, but I would give a guess of--I cannot give a guess. It would be a substantial amount, well in excess of \$300 million.

In your question, you ask how that would be funded. Essentially, it would be an additional funding requirement on top of our \$1 billion of capital expenditures. We are, right now, for the first time in several years, in a fairly significant borrowing program, so this essentially would be layered right on top of our borrowings.

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Mr. Polsinelli: Would you be funding it all or would there be an increase in employee contributions?

Ms. Wakefield: Our plans are currently noncontributory.

Mr. Wagoner: We fund it all, yes.

Ms. Wakefield: --or else, have to have some conversation with our employees. If you would like, we can consult with our actuaries and try to get a good answer for the amounts and magnitude of unfunded liabilities.

Mr. Polsinelli: Yes, I think that would be helpful. But, the other part of the question was really, "Is this really an actuarial fantasy that we talk about, this unfunded liability?" Because, if we look at the track record, as Mr. McClellan had been pointing out, in terms of your track record and in terms of the government's track record dealing with Workers' Compensation Board benefits, they have substantially kept up with the cost-of-living increases.

Yet, the moment that you formalize that arrangement, the actuaries will come out and say, "Here is your unfunded liability." In my mind it seems a little bit difficult to grasp that, all of a sudden, you have a \$2 billion commitment, whereas, two minutes ago you did not have, even though you had been doing exactly what the law would tell you to do.

Mr. Wagoner: I think the answer would be in our case that, if the law passes, it is a commitment. As it is now, it is something that we will negotiate over time and we may pick up 60 per cent of inflation for the future, and we may not. It is not a defined liability for sure, and therefore we do not have to fund for it.

If the law comes in, it is defined 100 per cent. We make projections with our actuaries as far as inflation, yield and things of that sort and boom, that is how much you owe. It seems, on the surface, a bit elusive, but I think, if you get into it, it is pretty clear.

Mr. Stewart: In fact, it is not elusive, because there you have the

commitments made that you are going to be funding for this over time, and the law requires you, in a specified way, to do that funding. It is not elusive at all; it is very much real. If the law were not there, as currently constituted, requiring you to fund your unfunded liabilities, then we would be in a real jackpot with pensions over time, so that is a very good aspect of the current law that requires those levels over the 15-year period.

Ms. Wakefield: That is why we say it is important for us to be allowed to maintain the flexibility to negotiate with our employees what the appropriate increase is on an ongoing basis, that it should not be legislated for us, that it is more appropriate with the subject of negotiation between the parties.

Mr. Polsinelli: Thank you.

Mr. Lupusella: On page 9 of your presentation you emphasize the principle that, "We believe that inflation indexation will widen the gap between rich and poor in our society, and will do nothing to help the 60 per cent of Ontario workers who are not covered by private pension plans." I agree with such a statement. It is true.

But if we can talk a little bit about the remaining 40 per cent; 20 per cent, I guess, are employed in the private sector and 20 per cent by the public sector. Am I correct or am I wrong?

Mr. Wagoner: I am not sure we have that figure.

Mr. Lupusella: Okay, let us talk about this magic figure of 40 per cent, which would be covered by private pensions. Through the course of your presentation, of course, you emphasized the principle of the total cash requirement which you need, in relation to the principle of inflation indexation. You were talking about all the millions of dollars that you are required to spend to comply with the principle of the legislation.

Did you do any study to find out, instead of talking about a total amount of money required by Bill 170, how much is the increase on the average private pension which the worker will be entitled to when he will apply, and also, the average amount of the pension which the retiree is going to require to the time when he will apply to get his pension? Do you have this detailed information, rather than talking about the total cash requirement which is required to comply with Bill 170?

Mr. Stewart: I guess, Mr. Lupusella, from our position all we can do is analyse our own plan and make our own actuarial estimates there. As we see it, the situation is that there is a wide variety of plans for varying levels of benefit in each plan, and each plan will have its own unique costs increase. So, you cannot get ones that are homogeneous, a sort of typical plan and then try to work out some typical average costs.

That is where we see a need for this pension task force to do some further study. Nobody has really got into that. You see ball-park figures kicked around and then you see our figures, based on our specific plan, and you see the massive increases involved. We think you need to get right at the heart of a whole series of plans to get good, solid figures. Then, from that, you can start to determine what, if anything, you can do.

Mr. Lupusella: Well, I appreciate your answer. I know that it is a very complicated field to get into each private plan and to come out with

these particular figures, but if you have these figures regarding employees at General Motors, at least, they can give us a general guideline about the basic pension plan for which the retiree is going to apply and what inflation indexation means, if it will be applied on that particular plan. Will you provide members of this committee with this particular request?

Mr. Stewart: There is a whole other aspect; that is, the whole issue of tax reform. Nobody has had a chance to consider what implications that will have for private pensions and this whole issue of mandatory indexation. We are not going to have the benefit of knowing where the federal or the provincial government is going on that for I do not know how many more months to come.

We feel it would be not prudent to move on the whole issue of inflation protection now, not only for all the other reasons we have given but also for the tax reform thing. You want to see the whole global picture of spending requirements for people, taxation requirements and the implications for income before you make any move at all on indexation.

Mr. Lupusella: But if we are going to formalize the request on employees at General Motors, at least it is going to give me a general idea of what these increases will mean on the basic pension that will be granted to the worker who applies for this private plan.

The reason I need that is that we have to deal with concrete examples, rather than getting involved in a theoretical, political explanation. This government is faced with \$120 billion and the industries are sitting on all of this money. The political implication is that the government and industries are unable to release all these billions of dollars to the workers in Ontario. I do not think that is really giving the right political perspective; rather, it is exploiting the issue for a political purpose and nothing else.

Before I go to the public to explain really what the situation is all about, I need these figures, because I do not think it is responsible to accuse the government and industries of sitting on \$120 billion and, because of the unwillingness of the government, all of this money is not given out to the workers. It is very insensitive and it is terrible. I need these practical examples so I can go to the public to explain the situation.

Ms. Wakefield: If you look at page 1 of our submission, for example, it details how we pay out our pensions. I draw your attention to the third paragraph there which indicates that an employee who works with us for 30 years now is guaranteed at least \$1,205 a month. That should give you an idea of the magnitude of the benefit that we pay.

I suspect that the majority of our employees who retire probably serve 30 years or a substantial time. That would give you an idea of the base and you can figure from there, making your own assumptions on what the consumer price index would do, where those benefits would go forward under mandatory inflation indexation.

Our point is that that is a reasonably generous amount compared to most private pension plans and the relatively small portion of people who are covered by defined benefit plans. One of the reasons that our cost increases were so much is that, because they are already compensated well, the percentage increase, if you will, will be more. That is really the point that we make there.

Mr. Lupusella: Thank you very much. I came a little bit late and, actually, I was unable to read this particular--

Mr. Chairman: I wonder if we could conclude the General Motors presentation. We are running behind time, as you will note. Thank you very much for the presentation and the discussion that followed.

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Mr. McClellan: Before they leave, will it be possible to get the historical data I find so interesting and you find so irrelevant?

Mr. Wagoner: Can we get back to you on that?

Mr. McClellan: Yes, sure.

Mr. Wagoner: We will do so.

Mr. Chairman: The next presentation is from the Consumers' Association of Canada--Ontario by Tom Delaney who does not have any prepared material and who will be making a verbal presentation. Please proceed.

CONSUMERS' ASSOCIATION OF CANADA--ONTARIO

Mr. Delaney: I would like to introduce Susan Beck who is the information officer of the consumers' association, and express regrets from the president of CAC--Ontario, Barbara Beck, no relation to Sue. The consumers' association had a very active weekend in the city of Toronto in which most of the active members were involved. They of course had to go home to look after their personal responsibilities and home life.

At the outset, I should perhaps tell the members that the time slot for our presentation this morning was decided about four o'clock on Friday evening last. We have had a series of correspondence with the minister directly as a consequence of the draft bill and have had some responses. Frankly, we felt we blew it as far as this committee is concerned and I express my apologies. However, I should get on with this.

Perhaps I might preface my remarks by saying that unlike the previous group that appeared before this committee, the Consumers' Association of Canada is a voluntary, nonprofit and nongovernmental organization with more than 150,000 members across Canada, almost 56,000 of whom reside in Ontario. The CAC has a long history of involvement in the reform of Canada's retirement income system as an independent voice representing all Canadians who have an interest in the private pension system by virtue of the tax assistance provided by both levels of government to plan sponsors and their members.

CAC--Ontario welcomes this opportunity to express its views on Bill 170 to this standing committee of the Ontario Legislature. Our overall view of Bill 170 is that it represents a major step forward because it addresses most of the serious shortcomings in the 1965 Pension Benefits Act. However, there are a number of outstanding issues that CAC feels have not been adequately dealt with. In this submission we shall concentrate on what we consider are the weaknesses in Bill 170 and make recommendations for its improvement.

Perhaps I should mention that as soon as we can have this text, which I personally worked on all weekend, typed up and prepared, perhaps later today, and if not, at the latest tomorrow, I will make sure that the members get a copy.

The first issue I would like to address of course is the

pension-surplus-and-indexing issue, which was the subject of some discussion immediately prior to our appearance here.

In our 1977 submission to the Royal Commission on the Status of Pensions, the CAC recommended that, "Excess interest earned on pension funds should be used to provide mandatory, ad hoc indexing to pensions and pay and to enhance existing benefits for plan members." By "excess interest" we mean any interest or capital gains earned in excess of the interest rate assumed by the plan to calculate its obligations. This interest assumption ranges from six to eight per cent in most defined-benefit pension plans, which, of course, cover over 90 per cent of plan members.

We also recommended to the royal commission that pension surplus should not be used by plan sponsors to pay down their financial obligations to the pension plan.

In contrast to the controversy surrounding pension surplus today, it is worth noting that we criticized the Ontario government in 1977 for making concessions to plan sponsors by extending the experienced deficiencies makeup period from five to 15 years. We find no specific reference to experienced deficiencies in Bill 170. In section 106, however, the commission or the superintendent is given authority to extend any prescribed time limit with respect to the administration of the bill.

In a recent letter to the Minister of Financial Institutions (Mr. Kwinter), we restated our position on the status of pension surplus in the context of Bill 170. In the same letter, we also recommended consideration of an amendment that would provide greater flexibility to a retiring plan member with respect to indexing. This particular proposal would be revenue-neutral and would be entirely consistent with the federal government's reform of Canada's retirement income system. With more than one million Canadians changing jobs each year, it would add additional flexibility to the greater number of locked-in registered retirement savings plans that will develop as Ontario's pension reform matures into the 1990s.

Therefore, the Consumers' Association of Canada--Ontario recommends that Bill 170 be amended to provide pension plan members the option of selecting an actuarially reduced indexed pension payout with all or part of their entitlement when they become eligible for their pensions.

This next issue relates particularly to survival benefits. The CAC applauds the drafters of Bill 170 for mandating actuarially reduced survival benefits that would guarantee 60 per cent of the basic pension to a surviving spouse, if any. However, there is a related issue in connection with section 50 of Bill 170 that refers to variations in the payments of disabled or extremely ill persons. We feel this provision should be changed before the passage of the bill.

To substantiate this proposal, let me say that we feel many employees forced into early retirement due to health considerations, particularly those with terminal conditions, should be guaranteed the option of selecting a 100 per cent joint and survivor pension that would not reduce to 60 per cent immediately upon the death of the plan member. While under the 1965 Pension Benefits Act some plans do provide this option, most pension plans in Ontario do not.

In a case brought to our attention as recently as November 1986, a plan member aged 62 with 22 years' service in a pension plan was forced to settle

for 60 per cent survivor benefits on his deathbed. Under the terms of the plan, his spouse would have received only the refund of his contributions with interest of five per cent. Based upon her younger age, this refund of contributions would purchase an annuity of less than 36 per cent of the plan member's pension entitlement. Thus, it was necessary for the patient to sign early retirement documents in order to guarantee his wife 50 per cent of his pension.

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Before signing the documents, representations were made to the plan's sponsor, his employer, to allow the member to select an actuarially reduced 100 per cent joint life pension that would have increased the survivor benefit substantially. The request was denied on the basis that the pension plan text did not contain this provision.

In recent statements, the minister has indicated a willingness to consider any amendment to Bill 170 that is revenue-neutral. Actuarial reductions of benefits are indeed revenue-neutral to the extent that they require no additional funding whatsoever. Because the health and financial circumstances of each individual at retirement are unique, the Consumers' Association of Canada--Ontario recommends that retiring members of pension plans in Ontario be guaranteed the flexibility to select any stream of pension payments permitted under pension legislation in Ontario.

The next issue we would like to address is part-time eligibility. Under subsection 32(3) of Bill 170, a part-time employee must earn 35 per cent of Canada's yearly maximum pensionable earnings for two consecutive years to be guaranteed access to Ontario's private pension system. The YMPE in April 1986 was \$25,800; 35 per cent of this amount is \$9,030. This high earnings requirement will disqualify the overwhelming majority of part-time employees from access to the pension system in Ontario.

The new 50 per cent funding rule that plan sponsors will be required to meet when the legislation comes into effect will be lost to more than 80 per cent of part-time workers, according to reliable estimates. Therefore, the CAC recommends that Bill 170 be amended to reduce the percentage factor for eligibility from 35 per cent to 20 per cent, or \$5,160 annual income for 1987. We urge the standing committee on finance and economic affairs to adopt this proposal and make the necessary changes before final passage of the bill.

Termination and early retirement is the next issue I would like to speak to. Under subsection 43(1) of Bill 170, an employee who is terminated--and there have been a lot of them in recent years--or changes jobs voluntarily is entitled to require the administrator to pay the commuted value of his deferred pension in the form of a transfer to another pension plan if the administrator of the other plan agrees. That is one possibility. The second is payment into a prescribed retirement savings arrangement, and the third is to purchase a deferred annuity under which payments cannot commence earlier than 10 years before normal retirement date.

However, under subsection 43(3), an employee who terminates employment within 10 years of normal retirement age under the plan is denied the right to transfer as outlined above in subsection 43(1). We submit that this discrimination on the basis of age would be totally unacceptable to any plan member who understood its implications.

In its letter to the minister dated April 8, 1986, in response to the

draft bill, CAC recommended that section 42 of the draft bill should be deleted, and of course this section 42 incorporated this change with respect to limiting access and flexibility if a plan member terminated within 10 years of the retirement date.

CAC--Ontario recommends that subsection 43(3) of Bill 170 be amended to provide members who terminate employment within 10 years of retirement with the same entitlement to transfer the commuted value of their pension as outlined in subsection 43(1) of the bill.

Finally, probably the most serious flaw in Bill 170 is its failure to address the issue of private pension coverage in Ontario. More than 60 per cent of the work force has no private pension coverage whatsoever. In case anyone should think that politically this is an unacceptable goal, it is worth while noting that until the introduction of the Canada pension plan in 1966, all employers in Ontario with more than 15 employees were required by law to provide pension plans.

If we are to accept that pensions are deferred wages for employees and a cost of doing business for their employers, and CAC accepts this proposition, the CAC recommends consideration of mandatory private pensions that would progressively phase in compulsory pensions for employers with, say, more than 500 employees over the next five years, and for each year thereafter of more than 400, 300, 200, 100, 50 and 25 employees. These employers would be required to provide pensions for their employees.

While this expansion of pension coverage may not be, as I said before, politically realistic at this time, at this late stage in the current reform process, it is nevertheless worthy of serious consideration, in the view of CAC, at some future date.

As I indicated before, not having the resources of a General Motors, the CAC has a number of other concerns with respect to the bill. However, I have not been in a position to present these concerns to the committee today. I will be quite prepared to handle any questions that might arise.

Mr. Chairman: Are there any questions? We are a quiet bunch this morning, are we not?

Mr. Delaney: You are indeed. I realize the difficulty with respect to the fact that you have not had a copy of a submission from CAC.

Mr. Chairman: We will be discussing these, all of them, and we will have--

Mr. Delaney: Can I just mention that there are a couple of particular concerns relating to the implications of the bill itself for existing plan members? There are some issues I feel have yet to be resolved that have very substantial implications for people in their 20s, 30s, 40s and 50s who have already accumulated benefits under the old system. I am referring here to items like the 60 per cent survivor benefit.

Most defined-benefit plans, as I am sure you realize, are based upon a single-life-plan-member calculation. Thus, all the information related to a pension entitlement that has been at the disposal of or given to members, in effect, will be reduced, in some cases substantially, as a consequence of the imposition of a change if, as I understand the case from the minister, it is made retroactive with respect to credits already accumulated. That is on the

one hand. On the other hand, I am concerned about the fact that--and I recognize the fairness in it--the plans that use survivor benefits as the basis of their calculations at the outset will afford single members of those plans significant increases in their pension entitlement because of the requirement in the bill to increase single members' entitlement on the basis of the commuted value of what otherwise would have included a survivor benefit.

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I am particularly concerned about this with respect to public service pensions because of the fact--and let me say that the Consumers' Association of Canada shares the concern of many others with this fact--that public service pensions do not have the capital assets invested in capital markets representing their liability. What we have is increasing obligations that are accumulated against the tax base. As a consequence, these kinds of changes that are going to enhance the benefits because of the survivor benefit are going to add an additional burden on taxpayers generally.

Mr. Chairman: Thank you very much for a good presentation.

The next presentation is from the Toronto Civic Pensioners' Protective Association. Mr. Batchelor is the president, Mr. Chepswick is the vice-president and Mr. Woadden is a director. Please take chairs at the microphones, gentlemen.

TORONTO CIVIC PENSIONERS' PROTECTIVE ASSOCIATION

Mr. Batchelor: My name is Gordon Batchelor. I am president of the Toronto Civic Pensioners' Protective Association. On my right is Robert Woadden who is a director of our association and on my left is James Chepswick, the vice-president of the association. We are all prepared to say something, and I will kick it off when you are ready.

Mr. Chairman: Please proceed.

Mr. Batchelor: We do not have a brief; just notes of the bill.

Before I make the presentation, a few things concern me. I do not think you would mind me interjecting a little levity into the meeting. Coming down in the car, on the news I heard that top executives in Canada were in receipt last year of a 10 per cent increase in their salaries and, with the other so-called fringe benefits built in, it works out to 20 per cent. I do not know if that is right, but certainly that is how it was given over CFRB and CJCL. They mentioned that the top recipient of a salary was Frank Stronach at \$2.1 million.

When I hear people throwing millions of dollars around, I cannot throw millions of dollars at you, because about one thousand of the people I represent are people in receipt of a maximum pension in the city of Toronto of \$6,700 if they happen to be husband and wife. A widow or a spouse gets half of \$6,700. It does not sound like too much when you have representations made to you in the billions of dollars by motor companies and what not.

These people are very much people who I think in their lifetime have paid in service to their country and to this province amounts that could equal millions and multimillions of dollars. Many of them went through the years of the Depression, went through the years of the Second World War and have really contributed to the economy of this country and the stability of this province.

Each one of us sitting here has gone through those different years, so we do not speak from inexperience; we speak from experience. We speak from when there was not so much demand upon government and people were not always asking for handouts, but when there was a desire to contribute to the community and to the life of the community. We are not here today to ask you for a handout. We are here to present a case to you on behalf of people who should have mandatory inflation protection incorporated into their pensions.

When I was sitting in the hall, I heard that it is difficult to do this. We have to wait until the task force brings down its recommendations. Personally, on behalf of this association, I wrote to the Treasurer (Mr. Nixon) to ask that we be included in that task force. That was as a result of a news release from the Premier (Mr. Peterson) which got us slightly excited. I read in that news release at least an inference that surplus funds might or possibly or could be used for the economic development of the province.

We stand before you this morning to say that surplus funds in the pension fund are the funds of the pensioners. I say that because I have sat on both sides, labour and management, and there is never a negotiation conducted that does not say something or address itself to the question of pensions and costs.

A former controller I worked with at city hall, who was a great labour man at one time, pointed out when we were getting an increase of about \$5 per week, that he had added all the fringe benefits, one of which was pensions, and it was worth about \$12.50. If pensions were not being considered as part of the salary package, then I do not know what I was interpreting. It was presented to me off the cuff, in discussion with a man who had been a labour man and who was now in the position of being management for the city of Toronto. He said that all the fringe benefits were added on top of the \$5 a week or whatever it might have been. At that time, I said to this individual, "You give me the money, the \$12.50 a week, and 25 years from now you will not see me," but every pensioner cannot do that.

I came into this business of representing this association on the retirement of the late George Bell, who was then retired parks commissioner. They said they wanted a young guy. I was 55. I left city hall and took a 10 per cent smaller pension, and I did all these things with my eyes wide open. I took over this association and have worked with it ever since. I am now 67, so I am not as young a guy as I used to be, but I still feel full of beans when it comes to taking on issues like this.

I would like to speak specifically to the bill. I have mentioned that a mandatory indexing formula is required. I read in the paper--I do not know how much of it is correct--that Mr. Pilkey was in a sense running interference for the minister. When the Toronto Star writes an article like that, I do not know how much of it is accurate, but the important thing to us is that I got out of that article that there is a possibility that the issue is being stalled until such time as the task force can get into the situation.

1130

I have not been quite able to understand why there is a need for a committee such as this to hear this issue and then for a task force to hear it. The statement is sometimes made that the task force will look into the cost factor. We can talk to you today about the cost factor. You do not have to have a task force. Yet the provincial Treasurer did not acknowledge my letter and neither did the task force answer our request to serve on that

particular task force. On the task force as I know it, there is no one better qualified than some of the members of our association from a financial and pension point of view to contribute adequately to that task force.

There is something else that has to be mentioned too before I get into the question of the bill. I happen to be a credit card holder with American Express. They send out little things like this statement I have here. At the bottom, it is supported by the consumer price index, Statistics Canada 1984, Canadian Life and Health Insurance Association 1983.

The only person who has answered in writing the question I have posed about the purchasing power of the dollar has been my local member of Parliament. The Minister of Finance has not answered the question, the provincial Treasurer has not answered the question of why a dollar in 1975 purchased a dollar's worth of goods and, in 1985, it purchased roughly 50 cents worth of goods. People talk about salaries that might stand in 1985, say \$40,000 or \$50,000. You back that up to the time I retired and that is \$25,000, \$20,000. There is no question about that.

It says in this enclosure from American Express, "According to the consumer price index, inflation rose approximately 168 per cent between 1974 and 1984." This sets it in perspective: "A life insurance policy purchased in 1974 would have reduced in buying power by more than 50 per cent. A \$10,000 policy purchased in 1974 is now worth less than \$4,600." So anyone who has a \$10,000 life policy has just seen it blown away. Then, "An annual salary of \$20,000"--this is not Statistics Canada, but the insurance pitch being made by American Express--"means you may need a minimum of \$100,000 in life insurance." I do not know about my two friends on my left and my right, but I have not got it.

This is what we are facing, not only in this province but also in this nation. It is a serious economic problem. It is not something that should only be looked at by someone who may come before you and say, "We are spending \$1 billion here and so many hundred million dollars there." I feel the issue of money has always been resolvable as far as this country is concerned, provided everybody from the lowest individual on the totem pole up to and including the top, our federal government, wants to work at it.

That is why I said earlier that we are not here asking for a handout. Surely to God these people--I represent close to 2,400, but 1,000 of them are down at that \$6,700 or half of that level. Wherever I go, I always feel somewhat like an individual who comes with cap in hand. As I said before, I have sat on the side of unions and I have sat on the side of management, but when you are on the side of the union you feel you have some kind of clout. We do not feel that we have any clout when we come to you today except the clout that we hope that you will give us fair play in comparison with all the other submissions that are made.

Our association makes three points: (1) We believe in this mandatory indexing formula; (2) under no circumstances can employers or government withdraw surplus money from pension plans; (3), direct pensioner representation on pension committees should be mandatory. The foregoing and other points regarding Bill 170 are herewith presented for the attention and consideration of your committee.

The other points relate specifically to the following sections:

Subsection 8(2): Amend this subsection to read as follows: "A pension

committee, or a board of trustees, that is the administrator of a pension plan shall"--"shall" is the word--"include a representative or representatives of persons who are receiving pensions under the plan."

Section 18: If no legal barrier exists to take such action, the word "may" following the word "superintendent" in the first line should be deleted and, again, the word "shall" inserted in lieu thereof.

Subsection 23(3): The association feels there should be a clear indication as to whether the \$25,000 fine in section 111 applies to an offence under this section. It should also be made clear as to where responsibility rests for the commencement of any action on an offence.

Section 48: The association concurs with this section but is of the opinion that it should also take cognizance of the action in the following two circumstances.

1. Remarriage of a pensioner whose spouse dies and the provision of a pension for the second spouse--and I stress this--with reasonable limitations on a guaranteed pension period or ceiling being put in place. An age control might also be considered, if it is not contrary to the Human Rights Code.

I mention that because if any one of us who is a pensioner--and we are all fortunate to have our wives still with us--should lose his wife and go out and find a 20-year-old, I do not think anyone should get the pension from 21 years on, regardless of any restrictions. Age has to become a factor in relation to the pensioner who is still drawing the pension.

2. Where a pensioner, at the time of terminating his or her employment, did not have a spouse within the meaning of the definition set out in the act, marries after commencing receipt of the pension and such spouse does not appear to be entitled to receive a surviving spouse's pension.

Subsection 49(8): The association has difficulty in knowing what interpretation of this subsection to accept. As a result, we feel it needs clarification of what the words "living separate and apart" really mean. We reserve our position until we see such clarification.

Clause 53(2)(b): We do not agree with this provision and feel it is conflicting with the aims of other provisions whereby discrimination on sex grounds is prohibited.

Section 61: The association feels the permissive nature of this section should be removed and that it should become mandatory by removing the word "may" and inserting in its stead the word "shall."

Section 63: We are concerned that it is not clear under what circumstances there may be an offence if a person does not "ensure" that moneys are invested in accordance with the act and the regulations. Again, would the penalty of a fine of \$25,000 apply?

It is probably also appropriate that under this section we state our endorsement of the brief of the city of Toronto concerning the investment of public sector pension fund moneys, except in so far as it relates to limitation of foreign investments. This association is in favour of maintaining a limit but increasing such limit to 20 per cent.

Subsection 79(1): This section should be amended by deleting all the

words after the word "employer" in the second line. Any other deletions resulting from that change should also be effected, including the balance of section 79 and section 80.

Briefly, that is our submission. We hope you will look favourably upon our representations. I would appreciate it if someone would clarify--because I have yet to have the position of the task force--to my satisfaction, so I will understand the role of this committee and of the task force, whether we are to come again before the task force to make the same pitch we are making today. If someone could answer that--

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Mr. Chairman: Minister?

Hon. Mr. Kwinter: I would be pleased to do that.

You should know that Bill 170 is a document that has been worked on by various governments for nearly 10 years. It is a consensus document. In that consensus--that is, between all the provinces and the federal government--there was no consensus. As a matter of fact, every province, with the exception of Ontario, was opposed to mandatory inflation protection. We tried to work out some arrangement and could not.

Bill 170 is a very far-reaching document on pension reform. It was the decision of this government to introduce Bill 170. But we had to address the issue of mandatory inflation protection. In order to indicate where we were, we said that we were in favour of mandatory inflation protection but we wanted to establish a task force that represented labour, management and an impartial third person to take a look at how to do it. Rather than hold up this bill--because there are some far-reaching reforms that everybody should get the benefit from--we set up a task force to look at the separate issue, which is not in this bill, of mandatory inflation protection.

You are right. What is happening is that if you have representations to make to that task force, you will have to do that in a separate forum. Why we are discussing it here is that certainly the New Democratic Party has indicated that it planned to move an amendment to this bill to include it, and the leader of the Conservative Party has said that unless he hears some very good reason for not doing it, he will support that. That it is why it is in discussion in this forum.

Basically, the government has taken the position that it is in favour of mandatory inflation protection but does not want it included in this bill, because it has a task force that is looking at its implementation. Until they report, we feel it would be irresponsible just to go ahead without knowing the implications. That is the reason for the task force and that is the reason for this committee.

Mr. Batchelor: If this bill should pass, would we then go to the task force and speak to the question of mandatory inflation protection?

Hon. Mr. Kwinter: They are not mutually exclusive. No matter what happens to this bill, the task force is working. You can go to them right now, if you can get an appointment with them. You do not have to wait for this bill. They are sitting now and they are doing what they are doing. It is just a matter of contacting them and making your representations.

Mr. Batchelor: I have made my representations in writing to the minister and I sent a copy of my letter to the task force. Both were written a very long time ago and have not been responded to. It does not surprise me because, in another area of government, I wrote a letter on December 30 to the honourable Minister of Finance in Ottawa and got a reply on March 20, after I had made a copy of my original letter and had written across the front of it, "Is it possible to get a reply?"

I must not be too hard on the Treasurer (Mr. Nixon) because he did, on one occasion, answer a letter that I wrote to him. In that letter, he addressed what the Minister of Finance had already said:

"Mandatory inflation protection does not now form part of the provincial consensus. However, Ontario is continuing discussions with other provinces and the private sector on this important issue and it is hoped that consensus will be achieved on some measure of formal inflation protection in private pension plans."

I know there are many problems that exist in our form of government, nationally and provincially, from province to province, but I do not think that we should have to wait for a consensus of the provinces. Many things happen in this province which do not happen in other provinces. While there is need to have consultation and not to have it appear that Ontario rides roughshod over other provinces, to wait for a consensus that would bring about opinions, you have so many different economic factors from Newfoundland to British Columbia--there are so many arguments that could be put forward, that "We cannot afford this," and, "It is all right for you, in Ontario, a rich province; you can afford it."

I still say that we should in this situation, as we did the other day at city hall, make a statement that we are losing about 150 to 200 of our pensioners through death every year. Many of our pensioners are the ones I was talking about in that group of 1,000, the low-income group, and are those who do not even have the benefit of Canada pension. They do get other benefits through the old age pension, etc.

Here is something I would like to read to you from the Provincial Treasurer's letter. "In my two budgets, I have announced measures that will benefit seniors. I have enriched the Ontario tax reduction so that by 1987 no single senior citizen with income below \$8,900 or senior couples with income below \$15,700 will pay any Ontario income tax."

I think that is fine, but I do not know how many of us around this table would want to be looking at \$8,900 or \$15,700 as some kind of an income that we could be proud of. I am not saying the minister is proud of it, but the minister is probably doing something about it, and we are proud that he is doing something about it.

But these figures, when you see them in the cold stark light of day of the economy of Ontario and Canada in 1987, are certainly not inspirational to those in my group of 1,000 and many who receive more than that \$6,700 figure but who are again in a very low-dollar-income factor, so that every time, wherever we go, and this is the first time we have had the minister and the chairman to speak to a group such as this, we feel we are just being pushed off. I have said to myself, "I just damn well will not die," but I cannot say that for all the rest of my members.

Mr. Woadden: I am with you.

Mr. Batchelor: Bob says he is with me, and I think Jim here, a hard northerner from up around Thunder Bay originally--

Mr. Chapswick: Fort William.

Mr. Batchelor: Fort William. He does not want to recognize Thunder Bay.

Anyway, we feel these people cannot continually be put off by committees, whether it be here or at city hall or in Ottawa. You might be interested in another statement from the Minister of Finance. I mentioned reducing fear and insecurity, etc., among our seniors. "I fully share your desire to reduce fear and insecurity among older citizens. The government is committed to increasing payments to those elderly with inadequate pensions, as our resources permit. Our senior citizens can never feel secure unless we have a financially responsible government and a healthy, expanding economy."

I want to go over that sentence, "The government is committed to increasing payments to those elderly with inadequate pensions, as our resources permit." That is a repudiation of universality in that statement. I have been writing back and forth to Mr. Wilson to the extent that I think we might become pen-pals, but that says to me that the question of universality has to be considered again.

I do not know who is going to determine what is inadequate, adequate or what else. When I read to you \$15,700 or \$8,900, I consider that inadequate. Who is going to determine what is adequate? I have not written back to Mr. Wilson yet. He can wait a little while for my reply to his letter, because I waited a damn long time for his.

It does appear as if the question of universal pensions is going to pop up again at the appropriate political time. I know it will not come up in Ottawa before the next election.

Mr. Chairman: No, never.

Mr. Batchelor: I am not worried in the immediate future, but I do feel the people I am speaking for discount me because I have been one of the fortunate people. I do not get a big pension, but I have been fortunate enough to make wise investments in other things, so therefore I am not here to ask on behalf of myself. But I certainly am asking on behalf of people who are getting pensions of \$6,700, \$7,700, \$8,000, \$10,000 or whatever it is. These people cannot wait for ever for some form of indexation. They just cannot.

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Hon. Mr. Kwinter: I just want to clarify one point that you made about the statement about consensus. The province of Ontario in the pension negotiations, tried to get consensus on mandatory inflation protection. They could not. Every single province and the federal government opposed it. We are not waiting for a consensus. If we were to wait for a consensus, we would not have it. That is what happened in 1984. The then-Treasurer announced that we were going to have indexed pensions. He could not get consensus and as a result, he abandoned it.

We have made the statement that we are proceeding with mandatory inflation protection, so we are going against the consensus. The consensus

agreement is that it will discourage pension plans. Well, 70 per cent of the private pension plans are in Ontario anyway, so we have made the determination that we are going against the consensus. All we have to determine is how to do it and how to implement it, so it will have none of these negative impacts. That is what we are doing.

We are committed to going against the consensus. I just wanted to clarify it, because you said we should not wait for the consensus. We have made that determination.

Mr. Batchelor: I am very pleased to hear it and I am sure that Mr. Chepswick and Mr. Woadden are pleased to hear that. Now that we have determined that you are prepared to go against the consensus, how long or how far down the road are we looking for a reasonable conclusion to this particular problem?

Hon. Mr. Kwinter: The task force is meeting and they have a mandate to report back within a year. I would imagine that we will hear from them, I cannot guarantee how long it will take, but as soon as we hear from them we are prepared to act. They have been given a mandate to tell us how to do it. They are meeting to do that and when we hear their report, we will do it.

Mr. Batchelor: Thank you. Even though I have not had a response to my letters, we most certainly will bang on the task force door and make some representation.

Mr. Grande: First of all I would like to ask in regards to those documents and letters from the Treasurer, from the Minister of Finance, in other words the communication from the government that you were reading from, is it possible for you to make copies and leave them with the committee?

Mr. Woadden: We could get copies back to you.

Mr. Batchelor: Yes. We will get copies to you. I do not consider this a private document between the Minister of Finance and myself, or the Provincial Treasurer and myself. He has written and we have provided copies to all members of our association, so it is not a secret document.

Mr. Grande: I would like to ask the minister if the latter aspect of what he said right now in terms of being prepared to go against the consensus, is this today a repudiation of what you said last week?

Hon. Mr. Kwinter: What did I say last week?

Mr. Grande: You do not remember what you said last week?

Hon. Mr. Kwinter: No, no. I am just asking in what context? I said a lot of things.

Mr. Grande: In the context of the Ontario Chamber of Commerce and what you were saying about the fact that inflation protection is going to discourage plans.

Hon. Mr. Kwinter: I am sure you now have a copy of Hansard. Just so that you will know, your associate said that I was parroting the chamber of commerce, and I said, "They have said they are opposed to indexing; I am saying we were in favour of indexing." He said, "save it for the campaign." I said: "....I was asked to say what is the government's position. The

government's position is that we are in favour of mandatory inflation protection." I said twice in two sentences that we are in favour. I made an announcement in the House that we are in favour. The main reason for having this task force is to implement it. We are on record as saying that we are going to do it.

This is not a change. I am not saying anything new that I have not said. What I was saying last week was that the reason we are not doing it right now is because there are a lot of problems and all of the things that we have heard from General Motors and the chamber of commerce and everyone else, indicates that there are problems. The purpose of the task force is to address those problems and tell us how to do it. That is where we are.

We have not changed our position one bit. We are in favour of mandatory inflation protection. When we set up the task force, that was the reason for setting it up, and we are proceeding. The only thing is, we are opposed to putting it into Bill 170 until the task force reports.

Mr. Grande: If I may, my sense is that I am hearing a change of tune here from last week. I do not know. I guess the minister has to decide where he stands, on one side or the other.

Hon. Mr. Kwinter: The answer was there. Read it.

Mr. Chairman: Thank you very much, gentlemen. I think this is an argument that these two gentlemen might wish to carry on at some other time.

Mr. Batchelor: It is an argument we are very familiar with. Mr. Chepswick would like to say a few words. He is our vice-president.

Mr. Chepswick: I will try to be brief. I have to deal with things historically somewhat. I agree with our president's comments about the amendments to Bill 170, and I am glad that he provided you with a copy of that. We inadvertently forgot to do that in the first place. You have that now, so we will not deal with that particular item, but I will deal with the inflation factors and other matters that come to mind right now. I have been involved with pension matters from square one with the city of Toronto where I have been employed. Believe me, I have heard so much about that negative dialogue and the juggling of figures.

Being a carpenter originally, my means of levelling things off is different from the way the bookkeepers and accountants do it. I heard some dialogue in the hallway there about the bankruptcies and one thing and another, and they are afraid. Everybody is chicken to face up to the fact that these things are a fact of life. Historically, I do not know how many of you have been involved with provincial politics. I did not research this for before 1965, but it is on record that the Ontario Pension Benefits Act of 1965 originally was consummated because of the massive bankruptcies in the province of Ontario. Am I right on that, Minister?

Hon. Mr. Kwinter: It was before my time, but I would assume there must have been problems or there would not have been a reason for reform.

Mr. Chepswick: There were a hell of a lot of problems, believe me, and one of the reasons was that all these big shots in small companies were making money by going bankrupt while the poor worker was battered around from pillar to post and the money that he was putting in was lost, even if he was involved in pension matters. They say the company paid the whole shot. The

company did not pay the whole shot. Pensions are, in essence, deferred wages, and if they are deferred wages, whether or not a person is in a union, that particular costing is included in the overall cost to the company management. That is also true in the public sector, where we were.

I kid you not, that particular thing is in there, and when they get paying pension matters, I am suggesting to all of you here that they get double bonuses for that. Let nobody kid you otherwise. They get concessions for paying pension moneys. They also get special concessions from the excise tax department in the federal government for doing that.

So I am not going for their crying towel that they are going to go broke because of that. That does not send me one way or another. The minimum pensioners in the city of Toronto get is \$6,700. We have more than 3,200 pensioners in the city of Toronto, of whom more than 2,000 are in our association. We are not representing a small group, but we are not going to die because we are on pension. We are going to speak up if we do not get consideration the way we should.

I am in accord with the position that the province is taking in trying to get this inflation factor settled. Unfortunately, as you say, the other provinces do not want to agree with you, but I hope you never quit going after this inflation business because if you ever do, some of these companies are going to find other loopholes. I think that the companies that you are listening to are afraid because they cannot find enough loopholes with the inflation factors in there. They would never have enough opportunities to be bankrupting advantageously, and that is what their concern is. I kid you not on that.

Having said that, I do not want to belabour the point. The time for inflation protection is here now, and I do not know how I can emphasize it strongly for you. I think it is long overdue, and I wish you well in your endeavours. I hope that the time frame you are talking about comes a little faster than even you are considering, so whatever we can do to be of help to make this thing in effect, we will do. Thank you very much.

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Mr. Chairman: Thank you very much, Mr. Chepswick.

Mr. Batchelor: Mr. Woadden does not wish to speak. That is our presentation.

Mr. Chairman: Thank you very much, and do not forget to go to the task force.

Mr. Batchelor: We will not forget.

Mr. Chairman: We have everything you said on record.

Mr. Chepswick: Can we have the name of the person? Who do we contact?

Mr. Chairman: I am not sure.

Mr. Batchelor: Is it your ministry now, Minister?

Hon. Mr. Kwinter: Yes.

Mr. Batchelor: We will contact your ministry.

Mr. Chairman: We have one more presentation this morning, from Peat Marwick and Partners. We have with us today Randy Dutka, who is a partner, and Ms. Van Riesen, who is a manager. Sorry we are a little late. We will grant you your time in any event.

PEAT MARWICK

Mr. Dutka: Thank you for the opportunity to address the task force. You have been given a mini-tome, a small booklet. I am not going to talk to this in detail. I would rather talk in a more conceptual way at this point. This document contains our comments on the act itself, a section with comments on the draft regulations and a benefits letter that I am going to refer to later on.

My comments to you are basically addressed at the forest level as opposed to trees. Our written documentation comments on a lot of the details of the act. We would like to talk to the task force on some of the concerns we have about the act and maybe some of the directions that the act seems to be getting pulled into. It sounds as if you have heard a lot about mandatory indexing, but nevertheless, I have a couple of comments on that as well.

There are about four major things we have a concern about as it relates to the private pension system. I believe that as we have been going through the whole pension reform debate over the last 10 years the private sector has accepted a good many of the changes proposed by Bill 170. I think that as a general rule, we are looking forward to it, to have it done, and it is very difficult to work in an environment of uncertainty.

There are some things, though, that we think the government has to be very much aware of and attuned to over the longer term. It all hinges on the fact that this is a voluntary system and that one of the easiest things people can do is get rid of their pension plans or not implement them. We have a concern over reduced coverage in the longer term, that if administration is too complex, if the bureaucracy is too tough, if just complying with the act involves a lot of work, fees and expenses related to that, many smaller plan sponsors are going to balk at maintaining their current pension plan and certainly at putting them in.

An example of part of Bill 170 that we are concerned about is where the employer has the right to move out the value of a vested pension on behalf of an employee. The limit is quite low. When over the longer term we are going to find the administration of deferred vested pensions alone to be quite complex, we would prefer to see a little bit more discretion on behalf of the administrator of the pension plan in general.

The other thing that is going to affect coverage, of course, is the cost of compliance. Primarily, I think companies have accepted and have budgeted for the increases in cost that will result from increased vesting and the 50 per cent rule. We have a serious concern about mandatory indexing. This is not just a question of the short term. As long as a decision is not made, there is a concern that companies may overreact to the possibility of mandatory indexing and may make decisions that way, and we do not necessarily think that is the best thing for pensions.

A second major area is reduced funding. Ontario has a terrific track record, as does most of Canada, compared to some jurisdictions such as the United States, with respect to the solvency of pension plans. The 1965 act did a very good job of getting companies on the right track. Over the past few

years, obviously, we have had excessively funded plans in general or funded ratios over 100 per cent--surpluses in any event--mainly because we have had three out of four very good investment years. That has not always been so. Nevertheless, even through recessions and so on, company plans tended to stay reasonably solvent.

Again, the mandatory indexing, especially if it is going to come from a mandated use of surplus, we think will have some effect on employers in essentially funding their pensions as fine to the line as they can. You might be aware that the accountants have put in new rules for funding defined benefit plans and expensing the cost of defined benefit plans, which require best-estimate assumptions. We believe there are restrictions on the use of surplus such that companies will become much more aggressive in their funding assumptions, leading to lower assets in pension plans and, consequently, lower funded ratios.

A major concern we have and would like to talk about in a little more detail later relates to section 54. One of the major concerns of pension reform since the earliest reports--and the Haley commission spent a lot of time on it, of course--has been protection of survivors. One of the main thrusts has been to make sure there is something for the surviving spouse of a pensioner.

We believe the reaction to section 54, especially by people putting in new plans, will be to not have automatic joint life and last survivor pensions. Many companies have responded over the past 10 years to the need for increased coverage of pensioners' spouses by putting in automatic joint life and last survivor pensions without reduction in pension for their employees. We believe the implementation of section 54 will mean that companies which currently have this provision in their plans will retract it and just go to a guarantee period and that new plans will likely not have this as an automatic feature.

Finally, reduced pension levels: One of the major defences against the cost of mandatory indexing would be to reduce benefit levels. Also, while we think the government should have a policy of trying to increase coverage and increase pension benefits, again the restriction of the use of surplus will have a strong impact on benefit levels. Many companies implement benefits that are based on career average earnings and use the surplus to increase those benefits to current salary levels. If companies take a much more aggressive funding approach, essentially lower funding levels, that surplus will not be there to increase benefits.

We have some major concerns about the future of the private pension retirement system in Ontario if the bill goes too far.

The other thing we are concerned about and would like to address is the whole thrust of companies moving to money-purchase arrangements. Much of reform is aimed at improving the benefits of the defined benefit plan. The 50 per cent rule especially will have a terrific impact on contributory defined benefit plans. Many companies, in response to the new bill, are talking about changing to defined contribution plans. We have this among our own clients as well. There is more talk than action at this time, but nevertheless it is a concern we have.

There are a few reasons that people talk about this shift. One of them is that you can go to deferred profit-sharing plans and to registered retirement savings plans and not be regulated by the province. They are

administratively simple and easy to put into place. The administration is very simple and it is easy to communicate to employees compared to the complexity of something like the 50 per cent rule on termination of employment.

Finally, there is this suggestion that defined contribution pension plans would not be affected by mandatory indexing. I am not really quite sure where the government stands on this position. However, we feel fairly strongly that if the government at any time is going to implement mandatory indexing--and we do not believe this is the correct time to do that--defined contribution pension plans as well as defined benefit plans must be affected. Otherwise, you have, in our opinion, an inconsistent policy where you are protecting the members of some pension plans and not those of others, especially when over time this may accelerate the growth of defined contribution arrangements.

It is an issue we have a fairly strong feeling about for mainly two reasons. The money purchase arrangements have their advantages, but essentially we do not believe they are in the best interest of employees. First, under a defined contribution approach, the employee now has the risk. All too little is said about the risk of a defined benefit plan, but if moving to a money purchase arrangement, be it a group RRSP or a defined contribution pension plan, the employees must now bear the full risk of investments as well as annuity purchase rates when they retire. This is a significant risk. The third part of this handout is a benefits letter with the overly dramatic title "Money Purchase Arrangements: The Shocking Truth." The major thrust of that benefits letter is to discuss the risk actually involved in these types of arrangements. We think the government should pay close attention to the information contained in that benefits letter.

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The second and perhaps even more significant issue is that defined contribution plans, we believe, will lead to lower pension benefits again in the longer term.

A typical defined benefit plan has a minimum investment usually of about 40 per cent in equities; 40 to 60 per cent is a pretty typical range among employers in Ontario. When you look at the situation with respect to defined contribution pension plans, you often find that almost 100 per cent or 100 per cent of the investments are made in some type of guaranteed investments.

We believe that the defined benefit plan with a large influx of employer money going into the equity markets is only good for Ontario; there is nothing negative there that we can see. In addition, the excess yields, the interest, the capital gains potential and so on have been considerably higher and consistently higher over guaranteed investments in the history of the Canadian economy, and we believe that by moving towards defined contribution approaches and investing more conservatively, employees will have lower pensions at retirement.

A point we would like to make is with respect to section 54, the provision of equal values for single and married pensioners. There are a number of concerns we have about this section. We do not think it really is very appropriate, primarily because what we have is an employer voluntarily providing a benefit without reduction to an employee because of a specific need. The employee has a spouse, the employer decides that it is appropriate to provide a death benefit to that spouse, and voluntarily does so. It does meet a specific need. I think it is hard to make the same argument for the

case of the single employee who is getting an additional commuted value. The plan sponsor is of course being penalized for this. If they do implement an automatic joint life and last survivor pension, they will have to provide an additional death benefit or additional pension to single employees, at their cost, and again not meeting with any specific need.

The other thing we should look at is the context of the policy behind a section like 54, and we wonder how that could be consistent with the government's position on the Canada pension plan. The CPP also provides survivor benefits. Should the CPP provide higher pension benefits for single employees because, after all, single employees do not need the survivor aspects of the CPP. It seems to me that if private pension plans are going to be forced to provide higher pension benefits to single employees, because they do not need to make use of the survivor's income benefit or the joint life and last survivor pension, then the government should have the same policy with respect to the CPP.

Also, there is an inconsistency in the act that is really aimed at providing equal benefits, looking at especially gender discrimination that males and females must have equal benefits under defined benefit and defined contribution plans. Now, all of a sudden, the concept of equal values is introduced: a single employee and a married employee must have equal values at retirement. Obviously, you cannot have both and we wonder why the inconsistency. In any event, the worse that will happen, and we think it quite likely, is that companies will no longer offer this automatically, and this is a benefit which has some significant cost. Those are my comments on section 54.

Finally, on a very quick item--it could be that we just do not understand the process here--we are concerned that subsection 49(9) of the act suggests that the death benefit can be offset by group life insurance. Our understanding is that because the regulations do not make any comment about this ability, it means employers cannot offset group life against the death benefit from a pension plan.

I guess our real concern is that if the elected representatives of the province put that into an act and intend to have it as an option, we do not think it should be overridden by orders in council. That is just an issue we have, but if it is in the act, we should be able to do it. Many people think it is something that is accepted because they have seen the act and not the regulation.

Mr. McClellan: I have really just one question since we will want to look at and study many of the items you have covered a little more carefully before we get to clause-to-clause. You said you wanted to talk about the forest rather than the trees and you started off by talking about your concern over the surplus withdrawal moratorium that is in effect, lest it give a message to the public that surpluses belong to the pension plan and therefore to the employees.

Let me ask you what you think of the recent practice of the Canadian Imperial Bank of Commerce in the situation of Reeves Brothers Inc. in North Carolina where the Canadian Imperial Bank of Commerce and eight other banks provided \$100 million to Shick to take over Reeves Brothers on condition--this was a condition imposed by the Canadian Imperial Bank of Commerce and its consortium--that Shick terminate the Reeves's pension plan and remove the \$20-million surplus from that pension plan as quickly as possible and hand it over to the banks.

Other information in the article suggests that a senator from Ohio indicated that since 1980 in the United States, \$12 billion has been taken out of American pension funds through the process of surplus stripping. He said that American businesses have turned their pension plans into corporate piggy banks, and that is what is happening here too. If we are going to talk about the forest rather than the trees, perhaps you can comment on the ethics of businessmen, Canadian banks, systematically looting the pension plans of their employees to finance takeovers and acquisitions.

Mr. Dutka: A couple of things make the US somewhat different. First, they have had a moratorium on surplus withdrawals on ongoing plans for some time. It is quite common to wind up plans there, for companies to get their hands on surpluses, especially in a situation where they are perhaps not as solvent as they would like to be. Companies very often do that as a last step towards bankruptcy if they need the money to survive. Usually, even organized labour will go along with that practice to keep the company rolling for a little while. It is hard to comment on something that is that distant and I do not have the information you have.

Also, it should be worth noting that in the private sector in the US, the vast majority of pension plans do not involve employee money at all. Employee contributions are not deductible in the US, and except for some state governments and a few other oddballs, American pension plans are purely employer-paid-for plans, so the employer is taking back his own money.

The fact could be that they have been conservatively funding, using a very low rate of interest, for whatever reason, and have decided not to do that any more. Maybe they are going to go to a more aggressive interest rate. There are a large number reasons why one could do that ethically. There are also some whereby one could do it perhaps not quite so ethically. Nevertheless, the situation may be far more complex than is reported by the paper.

The employer has a choice. If you look at it from the point of view of the plan's sponsors and they are working on the process of setting aside funds to provide pensions--perhaps I might give you a parallel that I always use. If you were personally planning a trip around the world five years from now and setting aside funds to pay for that trip, there is a similar situation with respect to a pension plan. The company is making promises to employees and setting aside funds to make that. You have made a promise to yourself and you have set aside payments to do that. When you come back from your trip and it turns out you have set aside more money than you spent--that is probably unlikely, but nevertheless had you done that--would you go back and pay your hotel more?

Essentially, the surplus issue focuses on the fact that we have had some very good years. There certainly have been some attempts at surplus withdrawal that were illegal for other reasons. I think that has been quite confusing. In some of the big cases in Canada, it was not a question of ownership of surplus from a legislative point of view; it has been a question of fact that the document says they cannot have it and people have made some legal errors in taking that money out.

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Mr. McClellan: I have my own analogy, if I could share it with you.

Mr. Dutka: Sure.

Mr. McClellan: I am saving for a trip five years from now and I put the money in the bank and the money builds up interest. Then my bank manager phones me in year 4 and says: "I am sorry, but your interest rate has risen above our ceiling level and we are going to keep all the interest income in years 4 and 5, because we have this magic line that is called 'surplus.' Your account has crossed this line. Your property is now my property and your interest earnings now are my property." That is how I interpret the same little story you are sharing with us.

Mr. Dutka: In the case of something like the trip, I think it is fairly clear that it is your money. In pension funding, whether it is morally right, I think there are some significant concerns. The concerns we have function on how people are going to respond to it. If I am told, for example, that I cannot use my surplus or I must use my surplus for certain things, what I am going to try to do, wisely, is to make sure my funding is as accurate as possible.

Traditionally in Canada, and you may have heard of actuarial conservatism, there tends to be some conservatism in setting aside funds for the same reason that if you were really fanatical about your own affairs, you would probably have more money than less in the bank before you left on a trip. That has been pretty typical because companies do not like surprises.

If you are going to come back to a company in three years--you value a pension plan and come back in three years--the company would much prefer to have you say that there is a surplus than that there is a deficiency. Consequently, people have been setting aside funds on a fairly pessimistic basis, maybe getting deficiencies only one year in five or so.

If the actuary were absolutely perfect in his job, so that he could sit there and look down, he would find that in fact, half the time there would be a surplus and half the time there would be a deficit. That would be the perfect world, but the world is not perfect and people tend to put away more money than less.

Ms. Van Riesen: If I can make a comment here too, I think it is important to mention that it all comes back to the issue of risk. It is the employer who is bearing the risk in the circumstance of a defined-benefit plan. If you want to take the case where there is a deficit in the plan, it is the employer who makes up the deficit. The employee bears no responsibility for that. If it is a contributory plan, the employee has been making contributions and that is it. His contributions do not go up. He is not levied an additional amount. That is a fact of life.

You cannot say, "That is okay and we will leave that side of it all right," but when there are surpluses, then all of a sudden: "This is a different situation. Now it does not belong." The deficits belong to the employer but the surpluses do not. Back to the ethical question, I think the element of risk cannot be ignored.

Mr. McClellan: Neither can the issue of property rights. Our fundamental disagreement is that we are operating on a different set of assumptions as to where the property rights reside here. I say they reside with employees; you say they reside with employers.

Ms. Van Riesen: The employer is making the promise to pay. It is the employer who is bearing that promise.

Mr. McClellan: You cannot argue that a worker who forgoes a take-home pay increase or a part of his take-home pay in year 1 to cover off the cost of his retirement is not taking a risk if there is no inflation protection, because what he is risking is worthless money. That is the experience of people in this country, pensions that are worthless.

Ms. Van Riesen: Are you saying, therefore, that when plans go into deficit, the pension should be reduced?

Mr. McClellan: I am saying we need to work out a scheme to provide inflation protection and part of that scheme should involve the interest earnings on employees' wages that are sitting in pension funds. There are a number of problems that have to be solved, but we are not getting anywhere by just digging in and being intransigent. People are saying that pension plans that do not provide purchasing power are not worth the powder to blow them to hell and that, "If the private sector cannot reform pension plans, we will look to the public sector and put our pension savings into things like the Canada pension plan, where we know we can guarantee decent pensions with inflation protection." If the private sector cannot fix itself up, I respectfully submit, you are wringing your own neck.

Mr. Dutka: The problem on inflation protection, certainly in my position--I should tell you that our firm provides a certain degree of automatic indexing and has done complete ad hoc indexing every year for the past 10 years to the full consumer price index, so our firm has essentially a policy of providing full inflation protection to our pensioners. We believe in it as a policy and it is suitable for all firms.

Mr. McClellan: That is what General Motors indicated earlier this morning, but they are equally adamant in opposition.

Mr. Dutka: The major issue, though, that we see here, is that there is just too much happening. Just put yourself in the position of a pension plan sponsor. You have a new set of tax rules that are going to take us the next five years to get through. We have substantial changes to Bill 170. We have the regulations to absorb whenever they come out. We have changes in the the Charter of Rights that came out a couple of years ago.

There are a million changes and many of them are expensive. You have probably heard more cost estimates than I have, but the basic pension reform as it stands now is somewhere around one per cent of payroll. That is not peanuts. Indexing will make that look very cheap and I think there is a limit to what you can do now. There is a limit in saying to people, "Here are a lot of changes here and a lot of changes there, and these are going to cost some money and we want you to spend some more money and here are some more changes." In a voluntary system, the time can come when people are going to say, "Listen, I cannot absorb this quickly enough." I think that is a major issue.

It is not a question of yes or no in a longer term. That is another issue, but now, in the next couple of years, I think it is dangerous to put in something like even the threat of that hanging over plan sponsors, because it is too expensive and they have not absorbed what is changing now. There are not very many people who are completely up to speed on what is happening with tax reform, for example, and that is not trivial. That affects the way a company administers and designs its defined-benefit plan. There are a lot of things happening. You can go too far and our concern is that going too far in some areas, like section 54 and so on, are going to do nothing but start to defeat some of the goals of overall pension reform.

Ms. Van Riesen: And of the commission.

Mr. Dutka: And of the commission.

If the intention is still to have solidly funded pensions, you have to be very careful about telling people what they can or cannot do on surpluses, because I will tell you, people will stop having surpluses. We have had good investment years. That is going to happen anyway. We have good years and bad years. We have had good years but we are going to have some bad ones, by definition. The issue--it may be two years from now--is going to be the poor underfunded pension plans because everybody has a big deficiency, because the markets have just disappeared for a while.

Mr. Chairman: I do not think we have any concurrence in the two opinions. However, Mr. McClellan made his point and you responded. It being 12:30 p.m., maybe it is an appropriate time to complete this and see any of those who wish to return at two o'clock.

The committee recessed at 12:30 p.m.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

PENSION BENEFITS ACT

MONDAY, APRIL 13, 1987

Afternoon Sitting

STANDING COMMITTEE ON GENERAL GOVERNMENT

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Miller, G. I. (Haldimand-Norfolk L) for Mr. Fontaine

Polsinelli, C. (Yorkview L) for Mr. Offer

Clerk: Deller, D.

Staff:

Anderson, A., Research Officer, Legislative Research Service

Witnesses:

From the Canadian Institute of Actuaries:

Clark, K., President

Woods, W., Chairman, Committee on Liaison with Government on Pensions

Pelletier, J., Vice-Chairman, Committee on Liaison with Government on Pensions

Armstrong, D.; Member, Committee on Liaison with Government on Pensions

From the Ministry of Financial Institutions:

Kwinter, Hon. M., Minister of Consumer and Commercial Relations and Minister
of Financial Institutions (Wilson Heights L)

From Canadian Pensioners Concerned Inc.:

Woodsworth, J., President

Orr, A.

Huggett, H.

From GBB Associates Ltd.:

Seltzer, J., Chairman

Sutton, B., President

Bentley, J. W., Consultant

From the Wyatt Co.:

Christie, J., Actuary

Brown, M., Actuary

Individual Presentation:

Grey, D. W.

From the Pension Commission of Ontario:

Salamat, G. P., Director of Pensions

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GENERAL GOVERNMENT

Monday, April 13, 1987

The committee resumed at 2:11 p.m. in room 228.

PENSION BENEFITS ACT
(continued)

Consideration of Bill 170, An Act to revise the Pension Benefits Act.

Mr. Chairman: Now that we have a quorum--we are missing the minister, but let us continue with the presentation from the Canadian Institute of Actuaries. Ken Clark is the president. Mr. Clark, as you start, maybe you would introduce the people who are with you.

CANADIAN INSTITUTE OF ACTUARIES

Mr. Clark: Thank you very much, Mr. Chairman and members of the committee, for this opportunity to talk to you today about Bill 170.

The Canadian Institute of Actuaries is the professional organization for actuaries in Canada. Many actuaries give advice on the design and operation of pension plans and fellows of our institute have the authority to make valuations of pension plans under the Pension Benefits Act, the corresponding federal legislation and legislation in other provinces.

Our institute has the necessary committees to support the work of our members. Our pension standards committee is responsible for drafting standards of practice which guide actuaries in doing their work under the legislation. A regulator who is in doubt about the application of our standards of practice to a particular case can refer the matter to our review committee. Our disciplinary procedures committee is responsible for dealing with any complaint about the conduct of an actuary in a particular case. Finally, our liaison committee is responsible for liaison with government authorities on pension plan matters.

The three members with me at the table today are members of the liaison committee and they will be making our formal presentation. I should like to present to you, on my immediate left, Wayne Woods, then Jacques Pelletier and Don Armstrong. Mr. Woods, I will ask you to begin our presentation.

Mr. Chairman: If you are going to go through all this, I am going to cut you off, but please proceed in your normal manner.

Mr. Woods: Thank you. First, we would like to compliment all those who have been involved with the drafting of this legislation. We feel it is well drafted and a credit to them.

Along with our submission, which is on the top of the pile of material you have received, and which is not that lengthy, we have also included various submissions that we have produced in the last couple years, including our generic submission on current issues and pension reform, our submission on multi-employer pension plans, our paper on the disposition of pension plan surpluses and our submission to the parliamentary task force on pension reform. We have attached copies of these papers and submissions for those of you who are interested in looking at our views.

Today, we would like to comment on five issues regarding Bill 170. The first is to comment on the delicate balance between the protectionism that this legislation purports to provide within a voluntary pension system. We would stress that provisions should strive for minimum requirements.

Second, we would like to comment on the concept of deferred wages and its relationship to pension plans as well as the concept of deferred compensation.

Third, we would like to address a couple of discrimination issues, specifically section 54, dealing with discrimination on marital status, and section 53, on unisex.

Fourth, we have comments to make regarding uniformity.

Finally, we would like to make comments regarding section 89, which deals with reliance on actuaries to prepare a generally accepted actuarial report.

For the first two issues, I would like to introduce Jacques Pelletier, who is vice-chairman of our liaison committee.

Mr. Chairman: He has already been introduced to us, but go ahead.

Mr. Pelletier: On the first two items, as Mr. Woods mentioned, we are not going to go into all the details, but we have identified a few points. The first one is that private pensions are voluntary.

As active participants in the process of changes that have been made to pension plans over the last 20 years, we believe that improvements in pension plans were more often the result of a recognition of needs to be covered by a plan sponsor and of greater awareness on the part of plan participants than they were the result of any legislation.

We see the basic role of legislation generally to be (a) to create an environment which is likely to favour the continued expansion and the improvement of pension plans; (b) to require that steps be taken to ensure that the promises made voluntarily by plan sponsors will be kept; and (c) to prescribe certain minimum standards, such as earlier vesting in particular, to ensure that the pension promise is not void of a real meaning.

This role is quite different from that of introducing mandatory plan provisions which are not desired by either plan participants or plan sponsors and which run counter to the voluntary process. We are afraid that some of the changes that may be imposed on plan sponsors will generate changes in the way pension plans will be written. By this we mean that excessively complex and demanding legislation may well provoke undesirable shifts in the way retirement pensions are delivered, such as changes from defined benefit plans to defined contribution plans, from final pay plans to career pay plans and the elimination of some ancillary benefits. It may even discourage the continuation of some existing plans and the establishment of new ones.

It is our view that defined benefit plans are a very efficient means of meeting the pension promise, as they allow plan sponsors to provide more pensions to older employees with fewer dollars than is possible with other types of plans. We believe this approach is desirable and should be encouraged rather than discouraged by unnecessarily complex and costly requirements.

Some of the elements of the reform specifically do not fit the family of defined benefit plans; for example, an extremely demanding set of disclosure requirements in section 28 and in the draft regulations, and in particular, the requirement of the 50 per cent minimum employer cost is something we have objected to many times in the past. It is well documented in our paper entitled Current Issues in Pension Reform.

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The general structure of the Ontario proposed death benefits prior to retirement is undesirable in a defined benefit environment, we believe. Eliminating genuine differences arising from sex-distinct mortality in computing commuted values of pension benefits is an almost impossible task, unfortunately. Prohibitions to take account of marital status are a new requirement that we have strong reservations about.

By modifying the delicate balance between progressive legislation and burdensome or costly requirements, Bill 170 may, in our view, bring about the kinds of undesirable changes to pension plans that we have already mentioned. We recommend that care be taken to ensure that the legislation provides an appropriate degree of flexibility, simplicity and efficiency so as to encourage the establishment of more and better pension plans.

It seems to us that our second point is really at the core of many of the discussions and issues that are discussed and are attempted to be corrected by a number of areas of pension reform. We believe there is a need to make a distinction between the deferred wages concept that we hear about so often and a more subtle but very realistic concept that should be called deferred compensation.

While it is true that wages and benefits, including pensions, are part of what is generally referred to as the total compensation of an employee, it is not necessarily easily defined in the context of a defined benefit plan. The concept we adopt for a defined benefit plan is that of deferred compensation. The pension fund itself, regardless of who contributes to it, serves to ensure that the pension promise will be met. The deferred compensation is the pension itself when it is drawn and not the final assets backing up that promise.

The concept we see applied in Bill 170 is a restricted concept of deferred wages. In our view, it is a concept that suggests a clearly identifiable portion of the employee's wage is being subtracted from the wages and invested in a pension plan. Thus, the contribution becomes directly related to the benefit or the pension. This is certainly the way it is applied in defining the contribution pension plan.

We believe it is important to recognize the distinction and to be careful not to be drawn into applying the concept of deferred wages to a situation where the concept of deferred compensation more properly applies, especially in legislation bearing on benefits in the event of death, termination of employment, disability or the pension benefits in defined benefit plans.

To illustrate briefly our position, many defined benefit pension plans provide for subsidized early retirement benefits to employees who choose to retire early. Quite appropriately, a portion of the plan's reserve contains funds to cover the costs of these subsidies. However, this cost is not attributable to any specific member of the pension plan. Employees who elect

to retire early will receive some subsidy, with the amount being dependent on their age at retirement. Those who wait until normal retirement will not receive any subsidy. If one were to apply the restricted meaning of deferred wage implicit in Bill 170, all employees in a defined benefit pension plan would be entitled to the value of that subsidy regardless of their age at retirement.

In our view, it is inappropriate to give a narrow meaning of deferred wages to a defined benefit plan unless the employer has explicitly expressed a commitment to a specific amount of contributions to be allocated to each employee.

Pension fund assets should be regarded as analogous to an insurance fund which is adjusted from time to time to make sure there will be moneys to cover the benefits that are promised. The plan members who meet the criteria to claim benefits draw against that reserve; those who do not meet the criteria are not entitled to any benefit from the fund. There are similarities to this concept in life insurance, fire insurance and many other types of insurance.

I will now ask Don Armstrong, another member of our committee, to comment on some of the other issues.

Mr. Armstrong: In terms of the broad subject of discrimination, the institute's brief recommends the elimination of section 53, which deals with unisex mortality tables, and section 54, which deals with the matter of marital status and its application to joint and survivor benefits.

Dealing first with the matters of unisex and section 53, the Canadian Institute of Actuaries has expressed its great concern several times in the past, most recently in our Current Issues in Pension Reform paper, on the uneven and unintended results that unisex tables produce for both males and females. We again urge you to study this subject further and reconsider the usefulness of section 53.

As for section 54 and the provision of additional death benefits to retired persons without a spouse, it is difficult for us to understand the need for this requirement. Why would it be appropriate to direct more of the plan sponsor's resources towards those individuals who do not have need for such benefits? Would it not be better to preserve plan sponsor resources and have them utilized for needed plan improvements?

Section 54 could in fact cause plan sponsors who do have plans with a joint and survivor benefit as the normal form of payment to abandon such benefits rather than expend further funds for single individuals who do not need the extra death coverage. Incidentally, I guess we could also say it might discourage plan sponsors from adopting joint and survivor benefits as the normal form, which I am sure we would all consider appropriate or a good idea to consider.

Abandonment of the joint and survivor benefit could be caused by both the additional cost and the administrative difficulties posed by section 54. The principal difficulty introduced by that section is the actual basis on which the benefit for the single individual is to be determined. Do we assume this single individual to be married and to have a spouse three years younger, three years older, the same age or whatever? It would also be difficult to explain to employees with spouses that their monthly benefit is less than that of their co-worker who has no spouse.

Although on the surface discrimination on the basis of marital status may seem improper, such discrimination is widely accepted for benefit plans and especially pension plans. For example, the Canada pension plan realizes the need for efficient use of available resources and provides only for a spouse and orphans benefit to be payable on death of a contributor. The same principle should apply to pension plans registered under Bill 170. Once again, we recommend the deletion of section 54 from draft Bill 170.

The need for uniform legislation in Canada cannot be overstressed. Quite apart from the additional costs associated with administering a pension plan subject to different legislation in three or four provinces, there is the danger of plan coverage being withdrawn from those persons who happen to be resident in a province with a minority of plan members. Again, we could probably draw the possibility that plans being established could well be established only in those provinces having the most favourable legislation.

In the CIA submission, it is indicated that uniformity should apply to not only the general meaning of the provisions of the acts but also the language of the provisions. By way of a simple example, in the case of the 50 per cent cost-sharing rule, Alberta, Manitoba and the Pension Benefits Standards Act all provide that no more than 50 per cent of the cost of the contributory pension benefit be financed by the employees, a pretty important distinction.

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As for some of the specific areas where we would recommend adjustment to provide for uniformity, I will mention two. One is the 50 per cent rule and the ability provided under the Pension Benefits Standards Act to substitute for that 50 per cent cost rule minimum index benefits indexed to inflation. The institute feels that this is a desirable feature to have in the legislation and supports the PBSA handling of this situation.

In terms of pre-retirement death benefits, there also should be more uniformity. Again, we say that pre-retirement death benefits should be available to the spouse only, as provided under the PBSA, and we stress that, instead of having the full value of the deferred benefit payable on death prior to retirement, an amount in terms of 60 per cent be payable on death prior to retirement, to equate with the joint and 60 per cent benefit provided by Bill 170 and several of the other acts for death benefits after retirement. This 60 per cent is incorporated into Alberta's Pension Benefits Act and in the PBSA for persons who reach early retirement.

At this point I will turn it back to Mr. Woods to wrap up.

Mr. Woods: Section 89 diminishes reliance on actuarial expertise in respect to funding and other related actuarial valuation work in carrying out the purpose and specific requirements under the act. Clause 89(2)(a) has given broad powers to the Pension Commission of Ontario to decide whether assumptions and methods are inappropriate for a pension plan. The commission might decide that the assumptions and methods are inappropriate even if they are in accordance with generally accepted actuarial principles.

It is fundamental under generally accepted actuarial principles that the assumptions and methods should be appropriate to the design of the pension plan, the demographics of the beneficiaries and the particular circumstances for which the actuarial valuation is prepared. In our view, clause 89(2)(a) should be dropped and a new clause 89(2)(b) be worded so that a report is

submitted, "which is appropriate for the pension plan and is prepared in accord with generally accepted actuarial principles." We have suggested some specific wording in our submission for your perusal.

Subsection 89(3) adds specific powers to the commission to specify assumptions or methods or both to be used in the preparation of the new report. We believe that these powers go far beyond what is necessary and warranted. In our view, the commission should certainly have the powers to insist that a new report be prepared and be in accord with generally accepted actuarial principles. However, the formulation of the assumptions and methods is best left to the plan actuary operating in accordance with the standards of practice of the institute, backed as these are by a review and disciplinary process.

We would, therefore, welcome a change to the legislation indicating that, in cases where the commission is dissatisfied with any plan reports, the commission submit the report to the institute which shall then be responsible for determining whether the report is in conformity with generally accepted actuarial principles.

To this end, as our president has indicated to you, in addition to the standards committee which issues standards for our members, we have a committee on review that is available to the commission and is ready to provide opinions as to the appropriateness and correctness of an actuary's work. We also have a committee on disciplinary procedures, which has the power to take sanctions, including expulsion from the institute.

This ends our formal presentation, Mr. Chairman. I apologize; we have gone over the allotted 15 minutes. We welcome any questions you or members of the committee may have.

Mr. McClellan: First, I would like to thank the institute, particularly for the document on multi-employer pension plans, which I am sure the committee will find helpful. We have already had some representation about the shortcomings in the bill as it applies to MEPPs. I think your contribution will be helpful to us.

The one thing that has not been touched by anybody--and maybe I could ask for some help from this deputation--is the area of tax benefits to corporations for pension contributions. I realize we are entering into something that is cosmically complicated and a real swamp, but can you tell us in a nutshell, or as precisely as humanly possible, what kinds of tax advantages are available to corporations under federal income tax law for pension contributions, if any?

Mr. Woods: Yes. The question is, what tax benefits do corporations have under the Income Tax Act? Corporations are able to deduct contributions to pension plans as a business expense. If the corporation is in a tax-paying status, that will encourage employers to put funds away efficiently for the retirement security of their employees.

Mr. McClellan: Are there limits?

Mr. Woods: Definitely there are limits as to pensions and the amount of contributions. Basically, the contributions are subject to an actuarial certificate. Contributions cannot be made, for instance, if the plan is in a surplus position, defined by the act as being greater than two times the employer's contribution for the year.

Perhaps my colleagues have something to add to that.

Mr. Pelletier: I think you have covered it.

Mr. McClellan: I guess the only limit is whether there are surplus funds up to a certain level. In other words, if somebody is astute and discovers that surplus accounts are building up, it would be in his corporate self-interest to try to reduce that surplus in order to qualify for his business expense deductions.

Mr. Pelletier: Not really, because if there are no contributions made, no deductions can be taken. From the Department of National Revenue's point of view, limits are at two levels. First, the plan cannot be registered unless it contains some specific limits on benefits. Then the amounts of contributions that are needed to fund those benefits are subject to a limit, as described by Mr. Woods. If an employer does not make a contribution because he is in a surplus position, where there are no contributions made for that year, his taxable income is presumably bigger.

Mr. McClellan: Is it possible to generalize about the way most pension contributions are taken for tax purposes? In other words, is it fair to say that most employer contributions are written off as business expenses against taxable income, in your experience? What is the historical pattern?

Mr. Woods: I think it is fair to say that most contributions to pension plans for the private sector have been deductible. Of course, when you deal with pension plans of nontaxable entities, such as associations and hospitals, that is irrelevant.

Mr. McClellan: Our concern is with the private sector.

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Mr. Chairman: Any other questions?

Mr. McClellan: Does the ministry have any data on tax deductibilities from corporations that could be shared with members of the committee? Obviously, we are talking about an offset that none of the corporate deputations so far have volunteered to share information about.

Hon. Mr. Kwinter: A member of the pension commission said that they do not have that information.

Mr. McClellan: I am not surprised. I was wondering if your ministry does or if the Treasury does.

Mr. Chairman: We can pursue that later and see if we can get that information. The actuaries have the same kind of protection as my accountant does, I can see by listening to some of the things you have read. I am really intrigued by the fact that you say it is fundamental that the particular circumstances for which the evaluation was prepared be brought into force. That is great. Do you ever get into trouble? Never, eh?

Mr. Woods: I do not know if "never" is the right answer there. Definitely one thing I would like to reiterate is that the institute has adopted standards of practice which every member of the institute has to adhere to.

Mr. Chairman: I am pulling your leg a little bit, but there is no group in society like you and accountants with the kind of protection you have on a day-to-day basis. I will maintain that, and you can argue with me later if you like. It is always with generally accepted principles. You know that line you get from your auditor or your accountant. It is great, is it not? We have it here at Queen's Park. We do not have any problem if we say what we want to say in the House or in these committee rooms, but if I go outside the door and say it, then I have problems. You know what I am saying, do you not?

Mr. Woods: Yes, I think that, like accountants, we feel that these matters are best left to the professionals who are supposedly competent and not left to those who are not professionals to judge whether the matters are in accordance.

Mr. Chairman: I think I come in the latter group. Any questions?

Thank you for your presentation. Good material. As Ross McClellan has said, we will be able to use that in our clause-by-clause consideration of the bill.

Mr. McClellan: Some of it.

Mr. Chairman: I said we would use it, Mr. McClellan, and you said, "Some of it." I know what you are saying.

The next presentation is from Canadian Pensioners Concerned Inc.: Mrs. Woodsworth, Mrs. Orr and Mr. Huggett.

CANADIAN PENSIONERS CONCERNED INC.

Mrs. Woodsworth: Thank you for the opportunity to come before you today. We represent the Ontario division of Canadian Pensioners Concerned Inc. It is an organization of about 10 years now and it was organized, in fact, to do the very thing we are doing today, to address itself to the needs of elderly citizens for adequate pension income. We have other concerns, but that is our basic concern.

Here we are 20 years after organization, appearing before this committee of this province on a bill to reform pensions. We welcome this, because in 20 years there has been very little change--some, but very little--and about half the elderly of Canada live below the poverty line. They have their old age security pension, plus guaranteed income supplement, plus guaranteed annual income system, maybe a little bit of savings, and maybe not.

The majority of those persons are single and the majority of them are women. They are not in poverty because they were improvident. The women, particularly, are in poverty because they were full-time homemakers and housewives or because they worked only part-time and, in general, received very poor wages as women.

We appreciate the thrust of the present government towards pension reform. It is urgent, not that it will affect those of us from Canadian Pensioners Concerned who are appearing before you, but it is basic to the welfare of many of us, our sons and our daughters, your sons and daughters, and perhaps to some of you.

The 21st century is approaching very quickly, when a sizeable proportion of our population will be elderly, and provisions must be made for them. Here

today are Audrey Orr and Howard Huggett from our board of directors. They will be speaking for us today.

Mrs. Orr: We would like to start our presentation by stating our concern for those Ontario residents presently retired and those who will be retiring in the next few years. About 10 years ago, the plight of the elderly, particularly single women, was a strong driving force towards pension reform, and little has happened since to improve their situation.

In fact, over 60 per cent of older women in Ontario, particularly those who are widowed, divorced or separated, living alone and past retirement age, live below the poverty line. In 1980, the maximum payment from old age security, GIS and Gains for a single person with no other income was \$5,427, compared to the then Statistics Canada poverty line of \$6,549.

Many of the changes proposed in Bill 170 will take time to work through the system. For the next few years, we do not see the situation for the elderly in Ontario improving to any great degree. It is ironic that the very group of people who caused concern at the beginning of the pension reform process still seem to be the group of people unlikely to benefit from it for some time to come.

We would, therefore, like to recommend some Ontario initiatives through the Gains program. We should state that we do not want to be seen as endorsing this approach as a permanent solution. Conceptually, we have concerns with income testing. However, it would be an immediate method of responding to the desperate financial situation of many of our elderly residents.

The next century is only 13 years away. We believe the demographic changes taking place must be recognized by a deliberate policy to concentrate resources on services to the older members of the community.

As far as Bill 170 is concerned, generally speaking, we support the proposals and would like to highlight those that have our support, particularly vesting after two years of membership in a pension plan, the provisions for portability, 60 per cent of pension for the last survivor, the provision for an advisory committee and the provision for more disclosure requirements.

We regret that there is no provision to make pension plans mandatory in the private sector. However, we would mention our support of the proposed pay equity legislation, inasmuch as better salaries provide a better base for pension income. We also hope that ultimately the earnings of poorly paid workers of both sexes will improve.

We also believe in mandatory indexing of private pensions. As the committee is probably aware, our organization was one that argued strongly for the continuation of OAS indexing.

We support the present moratorium on ongoing surplus refunds until the committee studying this issue presents its report.

We would like to finish this part of our presentation by saying that, as an organization, we are concerned with the quality of life of our present seniors and for those who will be seniors in the future. This is why we are taking this opportunity to stress the importance of remembering those who will not immediately benefit from the pension reform proposals in Bill 170.

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Mr. Huggett: I will direct my remarks to one issue in the matter of pension reform, that of the so-called surpluses in pension funds and who owns them. This issue is basic to an understanding of such matters as the indexing of pensions and who should determine how pension funds are to be administered.

The point from which we begin is that these funds belong to the employees who participate in the plan. The chairman of the Pension Commission of Ontario, John Kruger, was quoted in the Globe and Mail on February 13, as saying, "Now, people are starting to recognize that pensions are a form of deferred wages." We recognized that some time ago and employees, particularly the more alert ones, know it also.

The employees' contributions from their pay are certainly theirs, while the contributions from the employers are moneys held back by the company to provide income when retirement comes. That arrangement works to the benefit of employers because it encourages workers, particularly the older ones who have proven their worth, to stay with the company and continue to contribute their training and experience.

On the other hand, it is evident that many companies believe that substantial portions of pension funds belong to them, as is proven by the number of times that companies have withdrawn large sums of money from the funds, often without telling the employees about it. That is why it is so important to understand why so much money is there to be shuffled around. It is there because few pension plans have any provision for indexing.

Robert Brown, an actuary and associate professor of statistics at the University of Waterloo, supplied some interesting figures to the Toronto Star on January 4, 1987. The professor pointed out that for a time in the 1950s, the inflation rate was almost zero and interest rates were in the three per cent range--a traditional long-range, inflation-free rate of return on investments. At that time, Professor Brown estimated that an employer with an \$100,000 pension fund for a retiring employee could have bought a pension of \$8,377 a year with 15 years of guaranteed payments. Today, an employer could provide the same pension with only \$65,574 because the insurance company from which the pension is bought is earning 9.5 per cent on the money.

That is why these large amounts of money are sitting in pension funds, labelled as surpluses. They should have been committed to paying higher pensions to compensate for the erosion of pension values by inflation. Even at our present rate of inflation, about 4.4 per cent, the professor points out that purchasing power is cut in half every 16 years.

Canadian Pensioners Concerned welcomes the fact that the Pension Commission of Ontario has, for the time being, placed a moratorium on any paybacks to companies from the pension funds of their employees, but there are plenty of cases of companies that have stopped putting any of their money into the plans. That, too, should be stopped until new guidelines are established.

We are encouraged that the Ontario government is willing to take the lead in Canada in protecting the income of retirees from inflation. We trust that it will press on, in spite of strong opposition from the business community. Pensioners have already learned that privileged groups never give up an advantage without a fight. The doctors of this province proved that with their campaign to retain extra billing. They warned that the government's move to end overcharging would wreck the health care system, just as businessmen

are now telling us that any move to indexation would cripple company pension plans.

Last June, the Ontario Legislature approved an NDP resolution that called for a law requiring that surpluses in private pension plans be used to protect against inflation. This resolution received support across the House with 12 Liberals and three Conservatives voting for it, and it was carried by 37 votes to 24. At that time, the present minister for pensions, the Minister of Consumer and Commercial Relations (Mr. Kwinter), went on record as saying: "The will of the House will prevail. There are serious implications, but if it be the will of the House, so be it." We are confident the Pension Commission of Ontario has noted that resolution, and we urge Mr. Kwinter to carry out the will of the House.

Information supplied by officials in the pension management field has also helped to explain how such surpluses come about. Ralph Loader, president of Pension Finance Associates, which tracks the investment performance of such funds, stated in an interview with the Toronto Star for its issue of February 24, 1986, that, "A healthy fund hopes assets will stay 1.5 to two per cent ahead of liabilities...but for 10 years we have seen surpluses of seven to eight per cent."

In the same issue, B. J. Vincent, actuarial consultant, quoted figures relating to a study of the performance of \$7.3 billion in assets of 74 pooled pension funds. Mr. Vincent stated: "For those investing regularly every month, the most common practice, last year's lowest return from the stock market was 12.3 per cent, the median 21.3 per cent. One quarter of the pooled funds got 24.3 to 35.4 per cent."

Data such as those prove how important it is to the interests of employees that they be well represented on the boards that administer these pension funds. Therefore, we strongly urge the Pension Commission of Ontario to draw up plans for ensuring such representation. We doubt that anyone in this room would, on a private basis, continue for decades paying substantial sums of money to an organization without receiving periodic reports on the state on the fund and a firm commitment as to how much he would get back at a future date.

As to the degree of indexation required, we note that both Mr. Peterson and Mr. Grossman have indicated a preference for 60 per cent. Mr. Rae has endorsed the concept of 100 per cent. We certainly agree and would urge that the commission plan for full indexing. Even a formula of 80 per cent indexation would allow considerable erosion of the pension's value over the years.

Furthermore, we suggest that pension plans should be funded by equal contributions from employees and employers, the minimum being specified. There should be provision for the employee to contribute more if he so desires. If I might add a personal note, I was fortunate enough while I was working to be enrolled in such a plan, and on a number of occasions I contributed considerably more than was required by the rules of the pension plan. It paid off in that I got considerably more in the way of income when the time came to retire. Many of the other employees did the same thing.

Finally, we strongly believe that until the indexation formula has been put into operation and employees have a strong voice in the administration of their pension funds, there should be no handing back to companies of any moneys from pension funds. At the present time, the Pension Commission of

Ontario, as we have already pointed out, has declared a moratorium on such payments. That policy could be changed at any time, and we would very much prefer to have this ban spelled out in the law.

We are very pleased and grateful for the opportunity to appear before this committee and trust that you will give our presentation full consideration.

Mr. Lane: I appreciate your coming to tell us about your concerns because when I look at the numbers of people out there, I see that people older than 65 are probably the group that has the most problems in so far as income goes today. I am one of that group.

Most of us have come through a period of time in the 1930s when there was not enough to live on, let alone to make any provisions for a rainy day. A good many women, particularly, never did get into the work force and many men worked for companies that had no pension plans, so I would think that you are in the group that probably should be and is most concerned about the situation that exists today.

I notice that you mention the changes proposed in Bill 170 will take some time to work through the system and that you do not see any great help coming from Bill 170 for retired people in the foreseeable future, and then you refer to a change in the guaranteed annual income system program. Would that be the only way you would see some immediate assistance?

Mrs. Orr: Yes. That seemed to us to be the most immediate way that something could be done, although, as we say in the brief, we do have concerns about income testing as a means of bringing people up to a decent standard of living.

Mr. Lane: Could you elaborate on income testing a wee bit more?

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Mr. Lane: Can you elaborate on income testing a bit more?

Mrs. Woodsworth: I think it is the only way we see for the province, with its responsibilities, to respond to immediate needs.

Mr. Lane: You are saying the guaranteed annual income system should be, in effect, an immunity, so if there is a change, then go to the income testing of some kind to--

Mrs. Orr: Basically, we do not see anything helping for the people who are currently in a bad situation. We think there will be people who will continue to be in a bad situation, simply because of the time it will take for the changes to have an impact on people who will be retiring in the future.

We looked at the guaranteed annual income system program as a way of doing something immediately for those people who seemed to have been forgotten in all this talk about pension reform, as a program that was already in place that could be used. Although, in itself, as I say, we have concerns about a mechanism that relies on income testing to provide people with adequate income.

Mr. Lane: You are thinking in terms of the Gains program for the short term?

Mrs. Orr: For the short term; that is right.

Mrs. Woodsworth: We should say that, currently, we are urging other measures to care for that present situation.

Mr. McClellan: I must thank the Canadian Pensioners Concerned for very solid advice, and also say how nice it is to see Mrs. Woodsworth again. Mrs. Woodsworth is one of the distinguished pioneers in the day care movement in our province and has had a long and distinguished career here in the city of Toronto.

I do not know what to add to the concern Mr. Lane raised with you, except to ask whether you were aware that the two-year vesting provisions which replaced the 10-year service and the age-45 rule are not retroactive in the bill.

Six years ago, we had a select committee on pensions that made the recommendation for a change of the 10-and-45 rule. The main reason was that the superintendent of insurance of the day advised us that, because of the stringency of the 10-and-45 rule, only about 10 per cent of pension contributors ever actually get to collect a dime in private pension benefits, so that the 10-and-45 rule is something of a scam and a ripoff and serves simply to siphon money from pension funds into surplus accounts, because every time somebody loses his employer's share, it just goes back into the employer's ledger.

I am afraid, unless there are some changes in the bill and the minister makes two-year vesting retroactive, it is going to be even longer than you anticipate before we see any benefit to our citizens and a whole generation, even those in their 30s, certainly in their 40s and 50s, will not benefit substantially by Bill 170, because all money that is invested in pension funds as of the effective date of the bill will remain subject to the 10-and-45 rule.

I do not know whether you were aware of that when you made your presentation.

Mrs. Woodsworth: Thank you for bringing that to our attention.

Mr. McClellan: I am sure that is something you might want to give some thought to. I assume the minister himself has given some thought to whether or not it makes sense. I certainly think it does to make the two-year rule retroactive to cover all active pension plan members, so that at least that one provision of the bill will be effective and not require another generation before it comes into effect.

Mrs. Woodsworth: As we pointed out, we are very concerned that, in the meantime, there is virtually no help forthcoming for people in poverty, so measures such as Mr. McClellan is suggesting, and any other this legislation could bring forward, would certainly need to look at the seniors below the poverty line. It is really out of fashion to let people starve. We are going to have to keep people alive some way. We had much better do it with the dignity of a decent pension scheme.

Mr. Chairman: There being no further questions, thank you very much for your presentation.

The next presentation we have is from GBB Associates, Mr. Seltzer, Mr. Sutton and Mr. Bentley. We have their submission before us. Please proceed.

GBB ASSOCIATES LTD.

Mr. Seltzer: I would like to thank the committee for the opportunity to make a presentation to you today. My name is John Seltzer. I am chairman of the board of GBB Associates Ltd. On my left is Barry Sutton, a fellow of the Canadian Institute of Actuaries and our president and chief executive officer. On my right is Wills Bentley, a special consultant to GBB since his retirement as superintendent of pensions for Ontario.

GBB Associates Ltd. is one of the largest actuarial and pension consulting firms in Ontario. In the written presentation that we have given to you, we have listed some of the major corporations among the 200 companies for whom we act as pension consultants. We are not representing these clients in this submission; the list is merely given to you as an indication of the extent of our involvement in the pension industry in Ontario. It covers a great many larger corporations with thousands of employees covered under pension plans.

GBB feels that many of the reforms proposed in Bill 170 are long overdue. These include earlier vesting, portability, survivor protection, improved eligibility and extended disclosure requirements.

There are, however, certain provisions in the new act and regulations which we feel require modification. These include the new funding requirements and some of the antidiscrimination provisions.

However, our main concerns are proposals on possible inflation protection and treatment of surplus which we feel constitute an attack, which we hope is unintended, on defined benefit pension plans. What we would like to do is concentrate our discussion on those particular points and I would like Barry Sutton to present our views on these matters.

Mr. Sutton: Some people will disagree with our concerns about the possible replacement of defined benefit pension plans by money purchase pension plans. In this regard, we think it is useful to recall some of the history of the development of private pensions in Canada.

In the 1940s and 1950s, when most of the longer-running pension plans were established, they were primarily money purchase plans. However, employers found that these plans did not meet their requirements to provide adequate retirement income to their employees and so, during the 1960s and 1970s, most employers switched to defined benefit pension plans.

In particular, money purchase pension plans fail to deliver adequate retirement income to employees who wish to retire early. If the money purchase plan is designed to provide an adequate level of retirement income at age 65, the amount of income for people retiring at earlier ages will clearly be inadequate. However, under a defined benefit plan you can design early retirement benefits to provide little or no reduction for early retirements, to provide bridging benefits between early retirement date and age 65 and to allow for such provisions as 30-year unreduced retirement.

It is our opinion and the opinion of virtually all our clients that the defined benefit pension plan is the best way to deliver adequate retirement income to their employees and that it should form the basis of their retirement program. Therefore, we are opposed to legislation that would discourage the establishment or continuation of defined benefit pension plans.

We feel that the proposals for mandatory inflation protection would do this. We believe that the costs of imposing inflation protection on defined benefit pension plans would discourage employers without pension plans from implementing them and would encourage employers with defined benefit pension plans to either reduce benefits or change their plans to money purchase pension plans to avoid the added and uncontrollable costs of inflation protection.

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There have been some comments in the media on the costs of inflation protection. On Saturday, I saw a cost quoted as low as one per cent of payroll. Obviously, a number of people have been saying that inflation protection is quite affordable and others have stated that the private pension plan sponsors have not really determined the costs of inflation protection. We disagree with these statements. We have estimated the costs of inflation protection for the plans of most of our clients and the cost is high.

If we assume that long-term investment yields are eight per cent, we can easily determine the costs of inflation protection assuming average rates of inflation. For instance, if average inflation is four per cent per year, adding full inflation protection would increase pension costs by about one third. This means that if a pension costs nine per cent per annum, inflation protection at an average rate of four per cent per year would increase costs by three per cent of payroll, from nine per cent to 12 per cent. This is the total cost. If the basic pension costs were split 50-50 between the employer and the employee, and employee contributions were not increased, the employer would be looking at a cost increase from four and a half per cent of payroll to seven and a half per cent of payroll, a cost increase of more than 65 per cent.

One further point that is not mentioned quite often is that most cost increases refer only to future service benefits. If you make indexing retroactive and require the indexation of past service benefits that have already been funded, the cost increases could easily be doubled.

There have been arguments made that indexing can be paid from inflationary investment yields earned by the pension fund. History has shown that this does not work too well. There is little correlation between average pension fund investment yields and inflation. In fact, some of the highest average investment yields of pension funds have occurred during the past four years when inflation has been relatively low.

As inflation rises, pension funds have difficulty maintaining earnings in pace with inflation, and that is because they are holding a portfolio of relatively low-yielding securities that were purchased before the rise in inflation. Some groups are also asserting that pension fund surpluses should be used to meet the costs of indexing. It seems to us that this is a very haphazard approach to the problem and the probability of a person's pension being protected against inflation becomes a matter of luck.

The result of imposing inflation protection, as has been suggested, is that employers who are already spending the most money on pensions and providing their employees with the best pensions would have to pay the greatest increase in cost. Their employees, who are already getting the highest pensions, now would get even better pensions and receive the most inflation protection. Employees with lower or inadequate pensions would receive lower amounts of inflation protection, and of course, employees with

no pensions would receive no inflation protection and their employers would not be facing any increased cost. It seems to us that this result is the opposite of what you should want. If more money is to go into the private pension system, it should be directed to those groups of employees who have low benefits or no benefits.

Another concern is that many employers are just not willing or are not able to face the increased costs. At best, they will reduce benefits to avoid significant cost increases. This would certainly be our recommendation to clients who are not prepared to increase their financial commitment to their pension plans. Many employers might even go further and terminate defined benefit pension plans and replace them with money purchase pension plans under which the only way benefits can be indexed is for the employee to take a reduced initial benefit.

We believe that the consequences of inflation are a general problem for society. The problem cannot be solved by attempting to force private employers, who voluntarily provide defined benefit pension plans, to pay the cost of post-retirement inflation protection for those employees who already have the best retirement incomes.

Another concern we have is proposals that have been made in regard to use of surplus. Under defined benefit pension plans, employers have the complete liability for deficiencies that develop in a pension fund, and as such we feel that the ownership of any surplus that develops as a result of employer contributions to the pension fund should belong to the employer. If they do not, employers will do everything in their power to avoid both the surpluses and the deficiencies.

There is a perception that surpluses are a result of windfall investment yields that have accrued to pension plans. We believe there is nothing accidental about investment returns being earned by many pension funds. Most plan sponsors spend time and money establishing and executing investment strategies for their pension funds and take risks to maximize investment earnings. If they cannot receive any benefit from the higher investment yields, there will be no incentive for them to take these investment risks that could result in deficiencies they would have to fund. Without taking these risks, there would be withdrawals of significant investment funds from the Canadian equity market.

Besides investment returns, there are many other factors, such as mortality, early retirement rates and rates of salary increases that can create surpluses or deficiencies in pension funds. Obviously, there will be variations in actual experience from the estimates that are originally made by the actuary. These variations cause surpluses if the experience turns out to be better than actuarial estimates, and cause deficiencies if the experience turns out to be worse than the actuarial estimates.

Up until this point in time, most pension plan sponsors have used estimates of future experience that were more unfavourable than their best estimate. This means they contributed more money than their best estimate of the required amount to provide added security for the members of the pension plan. Because of this deliberate overfunding, surpluses were more likely to develop than deficiencies. This was not a concern to plan sponsors since they were operating on the assumption that they would benefit from any surpluses that developed.

Another reason surpluses have developed in recent years is the actions of the pension commission that essentially require plan sponsors to put more

money into pension plans than are really needed. In 1980 and 1981, long-term interest rates were in excess of 16 per cent; however, the pension commission would not allow the plan sponsor to assume that the pension fund would earn in excess of eight per cent. Contributions were therefore much higher than required and surpluses developed as a result of this deliberate overfunding forced on the plan sponsors by the pension commission.

The pension commission requirements on funding of experienced deficiencies can also create surpluses. As an example, take the plan that had no surplus or deficiency at the beginning of a period. If at the end of three years, investment experience was below the assumed rate, a deficiency would have developed. The pension commission requires that the employer start funding that deficiency over the next five years. Assume that during the next three years the investment experience was better than expected, so the fund made back all the investment deficiency that developed during the first three years.

At the end of six years, the fund would be in a surplus position because of those deficiency payments, even though the experience over the six-year period was exactly as expected. It is difficult to see what right plan members have to this type of surplus.

We feel that if plan sponsors cannot benefit from surpluses, they will take actions to reduce their risks or to transfer the risk to the employees and to avoid, where possible, the development of any surpluses. These actions would include organizing their funding to minimize contributions so that surpluses will be less likely to develop; switching to money purchase plans where all risk is borne by the plan member and the employer's contributions are fixed; and purchasing annuities from insurance companies.

Insurance company contribution rates are typically lower than the minimum funding rates required by the pension commission for a self-administered pension fund. By purchasing annuities, the risk is transferred to the insurance company and therefore the only party that will benefit from surpluses will be the insurance company. Also, since insurance companies typically invest assets for annuity purchases in fixed-income investments, this would create a significant shift of investment capital from equity investments to fixed income investments.

In summary, we believe that the existing rules on surplus withdrawal other than the current moratorium provide adequate protection to plan members.

The new bill has made some changes to the funding requirements that we are pleased to see. In particular, we are pleased that the commission is recognizing the importance of a solvency evaluation. However, in our opinion, the provisions in Bill 170 do not go far enough. There are still a number of requirements for funding pension plans on an ongoing basis along with the new solvency requirements. We feel that the commission's only concern should be that a pension fund is solvent; that is, that there are sufficient funds in the plan to provide all the benefits earned to date if the plan is terminated.

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Funding requirements should be established to continue to maintain the solvency of a pension plan that is already solvent and to quickly reach solvency for a plan that has a solvency deficiency. As long as the pension funding meets the solvency requirements, we feel there is no need for the Pension Commission of Ontario to concern itself any further with the patterns of funding adopted by the plan sponsor.

We would also like to comment on some of the discrimination provisions in Bill 170. The revised act and regulations contain a number of provisions relating to discrimination that we feel are not consistent, and in some cases, not practical.

Section 53 provides that in order that benefits do not vary by the sex of the employee, the plan may have to provide that the employer contributions vary by the sex of the employee. In other words, when looking at discrimination because of sex, the Pension Benefits Act requires equal benefits rather than equal values or contributions. However, section 54 provides that where a plan provides for a joint and survivor benefit to a married employee, the value of the benefit to a single employee must be the same as the value of the joint and survivor benefit payable to a married employee. The only way the values can be equal is if the single employee receives a larger pension benefit than the married employee. This type of requirement will only discourage the provision of joint and survivor pensions at no cost to the employees.

We feel that to eliminate discrimination in benefits, the logical approach is to provide equal benefits. Tactics such as providing larger pension incomes to single employees than to married employees do not seem to make any sense to us.

In conclusion, we assume the government wishes to encourage the growth of the private pension sector, and in particular, of defined benefit pension plans. We also assume the government would prefer that pension funds be as well funded as possible to enhance the security of members' benefits.

In order to meet these objectives, we believe the current rules on the withdrawal of surplus and the use of surplus should be continued. Inflation protection should not be mandated for private pension plans. Minimum funding requirements should be related strictly to maintaining or reaching a fully solvent pension fund determined on a plan termination basis. Antidiscrimination provisions should be based on providing equal benefits and not equal contributions or values.

Thank you for the opportunity to make the presentation. We would be pleased to answer any questions.

Mr. Lupusella: On page 8 of your brief, you emphasize the principle of solvency deficiency created by plan amendments or the establishment of a new plan that should be allowed to be funded over 15 years instead of over five years. I accept the principle of your statement due to the fact that 15 years of contributions, of course, will produce more pension for the person who is going to retire, rather than considering the five-year period required under Bill 170. Am I correct or am I reading your statement wrongly?

Mr. Sutton: We think that allowing 15 years of funding of improvements will encourage employers to make these improvements and will make them more affordable. In the long run, pension benefits will be approved at an earlier time and people will get better benefits because of that.

Mr. Lupusella: So there is no disagreement in relation to that. The only disagreement is between the 15 years and the five-year period required under Bill 170.

I know for a fact that in Europe they use the so-called voluntary contribution to the private plans, especially for some people who are not

employed by the same company for a long period. They are able, by law, to make contributions to the plan even though they are not employed by the same company. Do you favour this particular option or do you think it is out of touch?

Mr. Seltzer: My view is that there should be as much encouragement as possible for individuals to save for their own retirement, whether that is through tax advantages, plan provisions or mandated ability of individuals actually to make contributions. In principle, I think we would accept the idea that employees can put up more money to provide more benefits under a plan. Where we might add a bit to that is that you do not usually get that unless there is some other encouragement. It is either a tax deduction or some matching from an employer.

In that area, while we have been concentrating and Bill 170 concentrates on pension plans, there is a growing employee benefit that is called savings plan or capital accumulation plan that does precisely that. It persuades individual employees to make contributions to the plan because by so doing they get a tax deduction or a tax deferment and a matching or some percentage of the employer's contributions. That already is occurring. If you shift your focus from just pension plans to the total provision for retirement income, there is this sector that is growing.

Hon. Mr. Kwinter: I want to comment briefly on page 7, just as a clarification. We have always used a figure that the surplus has to be 125 per cent of the liabilities and that is what you are saying here, but I do not want members of the committee who may not be familiar to think it is only 25 per cent of the liabilities. It is in fact all the liabilities plus a buffer of 25 per cent.

Mr. Sutton: That is correct.

Mr. Chairman: How is the Ontario pension benefit scheme? Is it pretty good?

Mr. Bentley: Are you talking to me?

Mr. Chairman: Yes, I thought I was.

Mr. Bentley: I did not quite get the question.

Mr. Chairman: I just wondered how the Ontario pension benefit scheme is.

Mr. Bentley: Do you mean after retirement?

Mr. Chairman: Yes.

Mr. Bentley: Well, I am still alive. You will notice I had to quit shaving.

Mr. Chairman: Very good. Thank you. Enjoy your retirement, as such; you are working now.

Mr. Bentley: Not as much as I used to.

Mr. Chairman: The last presentation for today is by the Wyatt Co. My secretary is away here. Do we have Mr. Brown?

Mr. Brown: Yes, and Mr. Christie.

Mr. Chairman: That is it?

Mr. Brown: That is it.

Mr. Chairman: Please proceed.

WYATT CO.

Mr. Christie: We are pleased to have an opportunity to present our comments. After listening to the last group present and also the Canadian Institute of Actuaries earlier this afternoon, I realize you are faced with the third or fourth group of actuaries in the program and I am afraid our comments, which I believe you have in front of you in a handout as well, are very similar to the ones you have just heard.

We would like to look at some particular issues, but first of all to point out that clause 97(b) of Bill 170 puts on the pension commission the responsibility to promote the establishment, extension and improvement of pension plans in Ontario, very desirable aims, and Bill 170 and many of its features of pension reform are consistent with this objective.

We believe the earlier vesting, the automatic post-retirement spouse benefits, the minimum interest standards for employee contributions and more flexible retirement ages, for example, are improvements that are generally acceptable to plan sponsors and will enhance the pension system in Ontario.

We are concerned, however, that the total impact of Bill 170 could lead to the opposite result, a cancellation of pension plans in Ontario and a curtailment or cutback in the benefits provided by them, which is certainly not the purpose and not the intention, I am sure, of your committee or your Legislature.

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We would like to look at particular issues. I know some of them have been covered by the other people. We will start off with the plan administration and the burden the act places on small businesses especially. There is a significant increase in administration under the act. Some of it is required because you are adding earlier eligibility, so there will be more people coming into the plan, and earlier vesting, so there will be more people terminating with vested benefits where they have to be looked after through calculations and given some form of benefit certificate even if they are in a noncontributory plan. At present, for example, in a noncontributory plan, a person leaves without vesting and there is really little or no administration. He is told he has not served long enough to get a benefit and that is it.

With the earlier vesting, you will now have a lot more terminations where they have vested benefits and, under the provisions of the bill and the regulations, the employee will be given, first, a statement that he is entitled to benefits and then a calculation of the amount of the benefits as well as a calculation of the value of those benefits and details on how, through the portability provisions, he can transfer them outside into another plan. It may also involve employee counselling as to what he has to do with it and so on.

For a person whose business is making widgets, pension plan reform is

going to add a great burden of administration in both the number of transactions to be processed, the paper flow involved and the complexity of it, the number of calculations he has to process and the complexity of the whole operation.

One of the other aspects that is one of the smaller details in the act is the proposal for a monthly accounting for employee contributions and the interest credited on such contributions. In effect, where you are running a contributory plan, with the provisions in the bill, you are running a savings account for employee contributions.

Most plan sponsors do not have a system in place to account for employee contributions and the interest on those on a monthly basis. They are going to have to put in a complex system to administer a contributory plan. Again, if you are manufacturing widgets, it is not your business to run these sorts of systems.

Mr. Chairman: Nobody is buying widgets, so what is the problem with the companies that manufacture widgets?

Mr. Christie: We point out that contributions to a pension plan are not meant to be short-term savings.

The previous group also mentioned that the legislation continues the requirement for going-concern valuations. It adds a new requirement for solvency valuations and in many cases the sponsors will have to do these calculations even though they are not contemplating the windup of the pension plan. Again, an extra set of calculations is involved.

The act requires many more items to be disclosed. In most cases, they are desirable and we are in favour of them. In some cases, we question whether they are necessary and they may have a negative impact on employee relations.

For example, a plan sponsor, even though he has no intention of winding up his plan, has to report every year to the employee what would happen to the surplus if there was a surplus in the plan and he did wind it up. It is like having the province give a statement to each property owner in the province every year saying, "If we were going to expropriate your land or your property to put a highway through here, this is what would happen; these are the procedures we would follow." You would not want to send a statement to every property owner each year saying what would happen if you expropriated land or if you were going to put a highway through there, because it would upset the taxpayers.

Similarly, the employer does not want to tell the employees every year, "Even though we have no intention of winding up the plan, if we did, this is the sort of thing that would happen." It is going to upset the employees without giving them any security.

We also point out that Bill 170 requires a lot more information to be available on request. It is no longer sufficient to have a current copy of the plan document on file; you have to have all the previous documents and all the previous amendments and everything that has ever been filed with the Pension Commission of Ontario. For many plans, the information is not available. The plan sponsor will not be able to meet the requirement.

We point out there are more taxes and expenses involved. Last year, the government raised the fees required for registering pension plans and for

filing annual information returns. This year, the taxes to support the pension benefits guarantee fund have been increased. No longer are the taxes placed only on plans with unfunded liabilities. Every plan in Ontario will now be assessed a tax based on the membership in the plan.

Also, because of the extra administration, the costs of administration have increased. The external expenses of a plan sponsor are likely to be increased. Actuarial valuations are more complex. More annual statements, rather than triennial statements, have to be provided to the employees.

For many sponsors, especially the small businessman, it may be hard to justify the continuation of the pension plan in the light of the increase in administrative expenses. The administrative expenses may in some cases amount to 30 per cent to 40 per cent of pension costs for a small employer. You are placing a very significant administrative burden on him in this legislation.

Mr. Brown will deal with the issue of the surplus.

Mr. Brown: We would like to deal with the issues of surplus and inflation protection. You have already heard this afternoon, and presumably several other times, about concerns expressed on the issues of surplus and inflation protection, simply because ownership of surplus and surplus refund questions have become highly contentious issues at present.

We are concerned that some of the considerations of this topic tend to stray away from the main issue at hand. I think it is very important that people understand what the issue concerned with a defined benefit plan is about and the reasons for surplus development and indeed the consequences of any action that might or does restrict the availability of surplus refund.

It is important to recognize that the key objective of a defined benefit plan is to provide a certain amount of promised benefit under the plan. This goal is normally achieved through good funding policy, good plan design to target the benefit effectively to the employee and legislation to ensure compliance. We think if all the benefits are properly funded, if the plan is properly designed and if there is legislation in place to protect the individual, then the surplus should be entirely at the discretion of the plan sponsor in terms of its disposition, subject of course to any provisions in the plan that may override this.

For example, there is really no reason a plan sponsor and employees, whether through the process of a collective bargaining agreement or not, would not wish to ensure that all funds in the pension plan vest in the employees completely. That should be something that is either at the plan sponsor's discretion or at least subject to agreement between the plan sponsor and the employees.

There have of course been inequities in the system when we think of the pension reform process. The good parts of pension reform are doing a lot to remove those inequities, such as earlier vesting and improved interest on employee contributions, to the extent that it should not be necessary, in fact, to allocate surplus funds to an employee.

As pointed out by the previous presenters, there is often misunderstanding of where and how surplus arises. We want to emphasize two main areas where surplus comes up. One is conservative funding. We define conservative funding as the use of actuarial methods and assumptions which are likely to result--they do not necessarily do so in bad times--in more money

being contributed to the plan than is actually needed to finance the promised benefits. This is often the result of concern by the plan sponsor for the security of his employees.

But, as has also been pointed out, it sometimes results from restrictions placed on funding by the Pension Commission of Ontario and its guidelines, which do not allow a plan sponsor to recognize current conditions. In that case, some plan sponsors have either consciously contributed or even been forced to contribute more to the plan than they would otherwise have done and they are now denied access to the surplus that has developed.

The second main reason for the development of surplus, and perhaps the one which most people key into, is that of experience. Most surplus has arisen recently because of favourable investment experience. That is the development of surplus that everybody is getting upset about, but there are other experience reasons.

Favourable demographic experience can result. The demographic assumptions are those where we try to anticipate how many people are going to live and how many people are going to die, who is going to terminate employment, who is going to stay in employment, when people retire, who is going to become disabled and so on. We can only make guesses as to what we think is going to happen. Of course, we go wrong in terms of actuarial funding, so experience gains or losses occur. An experience gain results in surplus; an experience loss results in deficiency.

If there is an experience loss from an incorrect demographic assumption, does that mean the employees should share in it and make up the cost? Normally, it is the employer who does so. Therefore, we think the employer is entitled to the surplus that accrues from experience gains.

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You must also remember that we have had several years of good investment experience. It is easy to forget the bad years of investment experience, particularly the middle 1970s when inflation rates were very high and investment returns were very low, many pension plans went into severe deficiency situations to the extent that the pension commission was at that time forced into changing its rules to provide for less onerous funding requirements. Those rules remained in effect for many years under the test valuation procedures and have now just been replaced or are in the process of being replaced under Bill 170 by the solvency valuation procedures. Therefore, we think an employer is entitled, subject to the terms of the plan, to the plan surplus as much as is required to fund deficiencies.

An employer should not be penalized because he deliberately decides to provide extra protection by funding conservatively, because he will not. He will not fund conservatively if he knows he cannot get his money back. He will fund at the minimum level possible and that will result in perhaps underfunded pension plans and certainly the greater risk of insolvency and certainly the greater risk of a drawdown from the pension benefits guarantee fund.

We think reasonable restrictions on plan sponsors to protect the pension rights of members are appropriate. It might look very attractive in the short term to try and stop surplus withdrawal, but it will be counterproductive in the long term. We think any regulation that could be viewed as a form of confiscation of surplus ultimately will undermine the solvency of pension plans and result in plan terminations.

On the issue of inflation protection, we agree with most other people that inflation protection is highly desirable as long as it is affordable. Plan sponsors, however, are extremely concerned about the additional and unpredictable costs of mandatory indexing.

From our experience, we know that many plan sponsors have provided ad hoc adjustments in benefits after retirement, perhaps often less than the full increase in the consumer price index but, generally speaking, ad hoc indexing is acceptable to plan sponsors because it is based upon affordability. Mandatory indexing requires upfront payment of funds to provide for something which is unpredictable and uncertain. Ad hoc indexing means that increases in benefits are provided as and when funds are available.

We have heard much about excess-investment-return-type approaches to inflation protection and they can be useful, but they are not a magical panacea or solution to the issue of inflation protection. It is simply a different method of allocating the available resources that are there.

Indexing is extremely expensive; that is, mandatory, additional add-on indexing. It is a substantial extra benefit and that cannot be disguised however you go about providing it.

Furthermore, the cost of providing automatic indexing is the greatest for the most generous plans. Is it fair or appropriate that those employers who provide the most generous plans should be hardest hit by the addition of indexing? If the objective is improvement of pensions, particularly for those plans which provide less generous benefits, perhaps it would be better to work towards an increase in the benefit levels rather than add-on indexing.

There is no requirement for an employer to have a pension plan; it is a voluntary instrument. So the concerned employer, the one who provides a pension plan, the one who provides a generous pension plan, is going to be hardest hit by the issue of additional inflation protection. His competitor, who does not provide a pension plan, will not be so disadvantaged.

We think many employers will not accept mandatory indexing. The costs of indexing are too high and too unpredictable. They will cut back in benefits or they will even terminate plans if an acceptable solution cannot be found to this problem.

Mr. Christie: We would like to turn to two other issues. First is the timing and there are two pieces that we talk about here.

Pension reform legislation was originally promised by the government early in 1986. We are already into April 1987. We feel it is unlikely that Bill 170 will receive third reading before the beginning of June. The regulations will probably come out some time after that. In our opinion, it is impractical to make the legislation effective January 1, 1987. It makes much more sense to move to January 1, 1988, without retroactivity to January 1, 1987.

Although we have known what is coming in the legislation, have had many discussions with our clients and other plan sponsors about it and have had a general understanding of what would be included in it, in both the act when it was first introduced and the draft regulations there have been new items added. Every time we turn around there seems to be some new wrinkle in the legislation. Most plan sponsors do not want to go through the amendment process two or three times. They want to make the amendments once and have them done with.

We feel that to do the job properly they should have three to six months of lead time after the legislation is introduced to implement the amendments. If the legislation were passed before the summer, then by January 1, 1988, most plans could meet the deadlines with very little trouble in making the amendments.

The second timing aspect that we wanted to touch on was the collective agreement situation. I know you have already heard about this one from other submissions. Subsection 19(2) of Bill 170 provides an exception for a pension plan that is governed by a collective agreement. In the way I read it, it seemed to be quite reasonable that if you bargain for pensions, you do not have to implement the changes until the agreement runs out or until a date three years down the road, whichever comes first.

From what we have heard from the pension commission, we understand that is not the way it is going to work. You do not have to change the document, but you still have to apply the pension reform provisions as if the agreement were changed on the date the act comes into effect. We think the legislation should be clearer, should recognize the collective bargaining process and should allow the deferral of implementation of pension reform until the collective agreement expires or until some reasonable date such as January 1, 1990, or something like that.

Our major concern, which I am sure comes out in our presentation today, is with the future of pension plans in Ontario. We think Ontario has a good system of private pension plans. Most plans are well-run, well-financed, sound plans. They are delivering on the promises that they make. The pension reform movement and Bill 170 in particular will correct some of the deficiencies that are in the legislation right now. The age-45-and-10 vesting was referred to earlier. Of the members of private plans in Ontario, 90 per cent have vesting at 10 years or earlier without regard to age. The 45-and-10 is so obsolete that plan sponsors have recognized the obsolescence for years.

There are other similar characteristics that plan sponsors have already recognized. Many plans already have automatic surviving spouse benefits at retirement. If you are married, you must elect a surviving spouse option unless you and your wife sign off, which is the gist of what your legislation is doing.

The good parts of pension reform will be adopted easily and the legislation will bring all plan sponsors into line with those things that good plan sponsors are already doing. We feel that properly defined benefit plans will continue to be the most effective mechanism available to provide pension benefits; however, the future of such plans is uncertain as a result of pension reform and also because of what your friends in Ottawa are doing with tax reform.

Defined benefit plans involve much more administration than a defined contribution plan and they tend to reduce contribution room under the tax proposals for registered retirement savings plan tax deductions. Administering and funding any group pension plan, even a defined contribution plan, is becoming too complicated, too uncertain, too difficult and too expensive, especially for the small employer.

Many employers are considering winding up their plans. Several of our clients have asked us about winding up the plans. Without a pension plan, those employers--I believe in one of the earlier submissions you heard last week, the consulting actuary making the submission said that if there are

fewer than 500 employers, he would not recommend to an employer to establish any pension plan. I certainly would not be recommending to my smaller clients to establish a pension plan.

The alternative is that you can provide for retirement savings through a group registered retirement savings plan. Such plans are not regulated or controlled by provincial pension legislation. They do not have to cope with regulations such as unisex, automatic spousal benefits, indexing, annual fees and pension benefit guarantee fund taxes. Why would you want to establish a group pension plan if you could provide retirement savings through a similar vehicle, through an RRSP?

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One of the key things, if our expectations are realized and employers do switch from defined benefit plans, not to defined contribution plans but all the way to group RRSPs, is that the Ontario government will lose its control over a significant portion of the retirement savings of its citizens, because those plans are controlled by the federal government and not by the Ontario government.

We strongly believe that the additional costs arising from pension reform and the administrative burden will cause plans to terminate or at least to cut back on benefits, and the spectre of indexing is causing concern among many major clients of ours. In our opinion, if Bill 170 is passed as it now stands, it could result in a cutback in plans. We are concerned that pension reform in Ontario could result in fewer plans providing smaller benefits to fewer plan members. That is not a very desirable picture for pension reform.

Hon. Mr. Kwinter: I have two questions. In your last statement, you said that if Bill 170 is enacted as it now stands, it would trigger abandonment of some plans. Are you saying that even without the indexing, there are concerns that you think will force people to leave it?

Mr. Christie: As it now stands, yes.

Hon. Mr. Kwinter: But the indexing is not in it.

Mr. Christie: I know.

Hon. Mr. Kwinter: But you are saying as it now stands.

Mr. Christie: I think the administrative burden is causing problems for small employers. There are things that have been pointed out. Most sponsors are willing to accept some additional administrative costs, and the desirable parts of the legislation; but when it comes to the unisex, when section 54 talks about the post-retirement adjustment for single employees, where you have to provide the same value of benefits as you do to a married employee, that just adds to the complexity of the plan and the difficulty of understanding what is going on.

I think there will be switching to defined contribution plans in any case and I think there will be some switching right out, even without the indexing.

Mr. Brown: I think that would be emphasized by the changes in the tax laws that are going on at the present time that would tend to encourage defined contribution plans, whether they be defined contribution pension plans or RRSP type approaches.

With the pressure on individuals through the tax mechanism to know what they can contribute to an RRSP in future years from the annual statement they will receive from the Department of National Revenue, and perhaps the lack of room that may be made available through the existence of a defined benefit plan, will create added pressure on employers to at least move away from the defined benefit plans that they offer. It is not a very difficult proposition for them, given the other difficulties that will exist from the administrative point of view.

Hon. Mr. Kwinter: I have one last thing I want to get on to the record. It has been mentioned a couple of times. I do not know whether my colleagues on the committee understand, but when you talk about companies ad hoc topping up their pension benefits, I want to make sure the members understand that does not come out of the pension plan, that is not out of surplus.

Mr. Brown: Yes, it would, for sure, but it could be done either way. It could be done through increases out of company revenues but, typically, we would expect that ad hoc increases would come out of pension plans either from surpluses or perhaps from a decision by a plan sponsor to put some more money into the plan to provide for increases in benefits. The important thing is, though, that it is more at the discretion of the plan sponsor as to when the funds are available to make that increase.

We should also indicate that ad hoc indexing can refer not only to post-retirement adjustments in benefits but also to pre-retirement adjustments in benefits, either to members who left the company and remained entitled to a deferred vested pension or to active members of the plan who participate in a career average earnings type of plan, where the employer will use available funds, whether already in the pension plan or not, to provide upgrades or additional benefits to the members of the plan.

Hon. Mr. Kwinter: But I am talking about people who have already retired and have received top-ups. These come out of assets of the company as opposed to the plan.

Mr. Brown: Not necessarily. They would often come out of the pension plan, especially at a time when surplus has developed.

Mr. Lane: When you started your presentation, I thought you were in favour of Bill 170 but were saying it should be kept in a more simple form and it was going to be expensive to administrate, even though there was no indexing in the bill. By the time you got through, I decided you were not in favour of Bill 170 at all. Was I right in the first instance or the last instance?

Mr. Christie: I believe in the first instance. Most of the things in Bill 170 we have no problems accepting and most plan sponsors do not have problems accepting.

Mr. Lane: Is there a way to keep it more simple than the present bill so it will not be so expensive to administer, other than what you have mentioned here?

Mr. Christie: You have had submissions from other groups already today that have filled out a lot of the details on it.

Mr. Lane: I am trying to get your opinion.

Mr. Brown: I think our feeling is that as long as it is kept simple, as long as it is not overdone and we can resolve the difficult problems concerning the issues of surplus and inflation protection, then Bill 170 can provide a very strong mechanism for the future of pension plans in Ontario. We have to be extremely careful that it just does not tip things over a cliff and go the other way, but certainly we are in favour of continued pension plans. We have to be. Our livelihood depends on it.

Mr. Lane: You prefer that it be moved ahead to January 1, 1988, as opposed to going back to January 1, 1987?

Mr. Brown: That would make more sense, simply from a practical point of view. It may be very desirable to go back retroactively to January 1, 1987, but as time moves on--and time passes very quickly--we will be in a position before we know it that it will be impossible to implement the thing on time anyway.

Mr. Lane: One way of keeping it simpler would be to move it ahead rather than move it back.

Mr. Brown: Yes, and the other thing is perhaps to reduce some of the unnecessary administrative obligations that are being imposed by the bill in its current form.

Mr. Pollock: Do I take it that Wyatt Co. does not manage pension plans for people? You are just consultants for pension plans.

Mr. Christie: We are employee benefit consultants, actuaries advising clients on pension plans and benefit plans.

Mr. Lupusella: You do a lot of work for the Workers' Compensation Board as well.

Mr. Brown: That is correct, yes.

Mr. Pollock: But you do not actually handle the money for them.

Mr. Christie: No.

Mr. Pollock: How do a lot of the plans compare with the Ontario municipal employees retirement system? You have likely heard of OMERS, which is a municipal plan.

Mr. Brown: Yes, indeed we have. We are, in fact, actuaries to OMERS.

Mr. Pollock: You advise them and--

Mr. Brown: Yes, we do, on the actuarial funding requirements. I would say that most private pension plans are not as well developed or as generous as OMERS is.

Mr. Pollock: It is a volunteer plan, though, is it not?

Mr. Brown: It is compulsory for all employees of employers who participate in OMERS.

Mr. Pollock: In other words, if they both volunteer, then they have a plan?

Mr. Brown: All public service employees of the municipalities are, in effect, covered by the plan.

Mr. Pollock: All municipalities, regardless?

Mr. Brown: No, I think there is an option provision that municipalities do not have to be covered, but they cannot have any other plan. The only plan they can participate in is OMERS.

Mr. Pollock: And you are saying it is a relatively good plan.

Mr. Brown: It is an extremely good plan. I should say it is typical of the public service sector type of plans. It compares equally with the Public Service Superannuation Act, the teachers' fund, the Ontario Hydro plan and the hospitals of Ontario pension plan. They are all very similar. They provide very similar benefits, and they are excellent examples of plans which have matured and provide an extremely good level of benefits.

Mr. Pollock: Does Bill 170 affect plans such as OMERS in any way, shape or form?

Mr. Brown: Tremendously, from an administrative point of view. It is going to impose an extreme obligation in terms of compliance, as it is on any of the large employers, whether public service employers or not. There is going to be a real scramble to try to keep track of the administrative obligations of Bill 170. I suspect that, whatever Bill 170 says, it is going to be two or three years before employers are in a position to comply with a lot of its requirements.

Mr. Pollock: What do you mean by administration? Just paperwork?

Mr. Brown: Just paperwork. Just pushing paper around, yes.

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Mr. Pollock: You cannot see any major advantage in that then?

Mr. Brown: Obviously, there are advantages in improved administrative systems, and I think they will come in time. We have been talking about pension reform and what it will bring for many years. I suppose employers, generally, could probably be accused of not having come along as fast as they perhaps should have in terms of meeting whatever it is they are likely going to be meeting when pension reform finally comes through.

I think we have been going through the process so long that a lot of employers in the private sector, certainly in my experience, are saying: "Look, we simply cannot do anything until we know where we stand. When we know where we stand, then we will make our decisions as to whether we are going to keep the plan that we have going in the same form, whether it needs restructuring or whether we are going to continue to have a plan."

They feel they cannot start making those decisions until they know what they have to deal with. We have been dealing with a moving target now for so many years that I think people want the target just to stop moving before they actually make some decisions. The trouble is that the target stopped moving at January 1, 1987, and we are already into April 1987.

Mr. Pollock: I believe this gentleman mentioned that he would

recommend that anybody with fewer than 500 employees would not get involved in the pension plan business. There are not be a lot of employers with more than 500 employees in Ontario, are there?

Mr. Christie: I was actually quoting a previous presenter from last week when I quoted the 500 employees.

Mr. Pollock: Since you are familiar with the whole setup, though, there are not a lot of employers with more than 500 employees, are there?

Mr. Christie: There are a significant number. I do not know about a lot.

Mr. Brown: There are also a significant number with fewer than 500 employees, of course.

Mr. Pollock: Oh, sure. By far.

Mr. Brown: I think the size of the plan at which there is a cutoff may be in question. I think a properly designed and structured plan with fewer than 500 employees can survive quite well in a reasonable environment.

Mr. Pollock: But with computers now, are you saying that if the 500 figure were in there, the computer business could help, that it could click in there if you had more than 500 employees?

Mr. Christie: It is more the existing arrangements. For example, it would be very difficult for General Motors to get out of the pension business because of its long history of existing arrangements and what it is in. But if you are talking about a company with 100 employees, it may be able to get out of the pension business quite easily by giving the employees an alternative arrangement that is easier for the employees to understand, simpler to administer and looks the same. It may not produce the same benefits, but it looks good. You do not have to sell the new plan to as many people.

Mr. Pollock: Am I correct in saying that in a lot of the plans, it used to be that you could get your money back out of it up until the first 10 years? Is that right?

Mr. Christie: Under the present law, you can get it out until age 45 and 10 years of service.

Mr. Davis: I will be very brief. First, I do appreciate your coming and giving us the briefing. Your idea around timing is very logical. I find that sometimes politicians are not too logical and, lately, I have found a lot of politicians are not too logical because everything we have done lately is retroactive, even back to 1976.

On disclosure, does that mean that the government would have to disclose, for example, each year what it would do with the excess in the teachers' pension fund?

Mr. Christie: I believe the teachers' pension fund has been made an exception to Bill 170, so the government does not have to disclose.

Mr. Davis: Why would the minister want to do that?

Mr. Grande: Ask him.

Mr. Davis: Are there any government pension areas where the government would have to declare what it is going to do with the surplus each year?

Mr. Brown: I suppose that is an interesting point. There are a number of pension arrangements that are run by the government, including your own, of course.

Mr. Davis: I thought that was interesting too.

Mr. Brown: Presumably, it is subject to Bill 170.

Mr. Christie: I do not think your own would be, but OMERS is at present subject to Bill 170.

Mr. Davis: That means that every municipality would have to declare what it is going to do with the surplus at the end of each year, according to Bill 170.

Mr. Brown: Actually, that is an interesting thing in that one of the problems OMERS has to deal with is that OMERS and the 1,066 or whatever it is employers that participate are really, in a way, joint administrators of the plan. There are certain obligations that are perhaps being imposed that I think will be almost impossible to comply with.

In that sort of situation, the central message would come from the OMERS organization itself, as opposed to the employers, but it would come through the employers. They, in turn, would be responsible for disseminating information to the employees, and also of course, disseminating information from the employees back up to OMERS.

Mr. Davis: The minister might like to comment on whether the pension areas that come directly under the control of the government would also fall under disclosure.

Hon. Mr. Kwinter: I am going to call on Gemma because there are some areas that we look after and other areas we do not. She will know that and will be able to comment on it.

Mr. Chairman: Gemma, can you please take a chair up here so we can record what you are telling us?

Mrs. Salamat: The Pension Benefits Act binds the crown, and therefore the disclosure required for private sector plans will also be required for public sector plans such as OMERS and the public service superannuation plan. So if there is a requirement for plan documents to include who owns the surplus, that will also be a requirement for plans like the teachers' superannuation plan.

Mr. Davis: I would like to clarify this. We can clarify it over the next few days, Mr. Chairman.

Mr. Chairman: You may have to, but go ahead.

Mr. Davis: In the brief before us it says, "For example, even though a plan sponsor has no intention of winding up his plan"--or her plan or in this case the government's plan--"the draft regulations would require the sponsor to report annually to the employees regarding the use of surplus if

the plan were wound up." Is that section of Bill 170 incumbent upon the government? Would it have to do that to all the employees whose pensions it sponsors?

Mrs. Salamat: As part of the annual disclosure information to employees, there is a provision relating to surplus ownership, and the statement of who owns that surplus must be reported to employees on an annual basis. It is part of the comprehensive annual disclosure requirement to employees.

Mr. Davis: Just a minute. I understand that, but that is not what this section is saying, unless I am misunderstanding what is written here in front of me on page 3. It says that what the sponsor has to do is to report how that surplus would be used if the plan were wound up. I understand what you are saying about who owns the surplus, but does that section of Bill 170 apply to the government as well? I do not know which pension plans you look after. You tell me superannuation is out.

Mrs. Salamat: No. All the plans, including the teachers, the public service and OMERS, will be subject to the Pension Benefits Act in just about every respect.

Mr. Davis: Okay. Under Bill 170, would the Minister of Education (Mr. Conway), the present minister, if he is looking after the teachers' superannuation plan, have to indicate to the teachers how he would disburse the surplus if he were to wind up the plan each year, as is prescribed in Bill 170?

Mrs. Salamat: The actual disclosure requirements are covered in the regulations and are not in Bill 170. Bill 170 sets out the principles and things that a pension plan should include. The actual disclosure requirements are covered in the regulations. In the regulations, there is a statement of who owns that surplus.

Mr. Davis: I am going to come back at it, Mr. Chairman.

Mr. Chairman: I suggest that would be a good idea because you are really into clause by clause.

Mr. Davis: With all due respect, I do not understand it clearly, so I will look at the bill, but it seems as if there is going to be a rule for the private sector and a rule for the public sector. I would just like to clarify it because I am not understanding it.

Hon. Mr. Kwinter: The impression I got is that there is not going to be a separate rule.

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Mrs. Salamat: There are no separate disclosure requirements for public sector plans.

Mr. Pollock: I have just one supplementary. Is OMERS in a surplus position?

Mr. Brown: Yes, it is at the present time.

Mr. Chairman: I had said this was the last presentation but that is

not correct. It was the last one on the first page. The last one for the day is by Douglas W. Grey who is both a private citizen and a president. Am I right?

Mr. Grey: I am president of the Toronto Typographical Union.

Mr. Chairman: Please continue.

DOUGLAS W. GREY

Mr. Grey: I will be brief. There is just one point I wish to touch on here, one that concerns a number of our Canadian members, specifically myself as a citizen and also as the president of the Toronto Typographical Union. It has to do with a majority of trustees being Canadians on the jointly trustee plans. I come before the committee as the president of the Toronto Typographical Union, Local 91. I am familiar with the pensions and benefit plans within our union.

Just to touch on a bit of history, back in 1964 I was locked out by the Globe and Mail along with others at the Toronto Star and the Toronto Telegram. Following that dispute, the courts ruled that the collective agreement was null and void, which included the noncontributory pension plan. As a result, the locked-out employees lost hundreds of thousands of dollars in pensions. That and other employer abuses brought about the present pension legislation we now have that protects workers' rights to their pensions.

Now employers have found new ways of using the pension funds for their own gain. You must know that pensions are being used in the merger and takeover game in the United States, as well as by companies terminating record numbers of pension plans to get their hands on excess moneys in the pension funds.

Today I have come before you to request that when changing the pension laws, you make it mandatory that the majority of pension plan trustees are Canadians and that only Canadian participants are on the administrative committee. I do not know if our pension plan is an exception to the rule, but it is a multi-employer plan and is jointly trustee between union and management. The five union trustees are all Americans while the five employer trustees are Canadians. The trustees then appoint the administrative committee, of which the majority are Canadians but are mainly representatives appointed by the international union president who then appoints them to the administrative committee.

At this time there is one administrative committee member who is not a representative; he is a local president. I also have been appointed to the administrative committee, which takes effect April 23, 1987.

Since the ultimate responsibility of the pension plan rests with the trustees and since this is strictly a pension plan for Canadian members, I believe that the law should clearly state that the majority of trustees must be Canadian and that only Canadians should be appointed to the administrative committee. Americans do not understand that Canada is a separate country. I have been in our union for over 30 years and have been quite involved. We have different laws and a much greater sense of social justice. I believe that we should operate our own pension plans the Canadian way, as there are advantages to having Canadian trustees that would allow those who have a vested interest to participate in decisions that affect Canadians and their own pension money.

I brought a little booklet along. I only had three and I gave two to the chairman. I want to read from page 10, "Article 3, trustees, administrative committee: The ultimate responsibility for the plan is vested in the trustees who shall, however, appoint and maintain a committee to be known as the administrative committee, the majority of the members of which shall be residents of Canada. The committee shall maintain an office in Canada which shall have primary responsibility for the overall operation and administration of the plan including...." It goes on.

We are very concerned that the number of people who look after our plan specifically do not have any money of their own going into the pension plan. It is going into the American plan. All the representatives' contributions go to the American International Typographical Union plan, and of the Canadians who have money there, there is only one who is presently on the plan who has a vested interest. That is our concern and I ask that you address that concern in Bill 170. Thank you for the opportunity to speak to you.

Mr. Pollock: Some of these you are talking about are international unions.

Mr. Grey: This is an international union. That is correct.

Mr. Pollock: I wondered why you would not all be Canadians on there if it was a Canadian union.

Mr. Grey: It is an international union that has two plans. One is an American plan and the other is all Canadian, so there are two plans.

Mr. Pollock: Why could you not have an all-Canadian plan and an all-Canadian union?

Mr. Grey: I am not Bob White and I do not want to address that, but the concern of a lot of the Canadians is that we want to look after our own pension plan. We are in a situation, as I said, with all Americans.

There are numerous advantages to it. Let me elaborate on it a bit. I will give you an example. The American plan is not doing as well as the Canadian plan. For 10 years, the average percentage on the American plan has been about a nine per cent return. The average percentage for the Canadian plan in the last 10 years has been 15 per cent. If the Canadian plan is doing much better than the American plan, you do not hear a word about it. Do you know what I am saying?

Mr. Pollock: I know exactly what you are saying.

Mr. Chairman: Is this something that is common to many plans?

Mr. Grey: In international unions I believe it is common, but I do not really know the exact answer to that.

Mr. Chairman: I notice the book you gave us is your own book.

Mr. Grey: That is correct.

Mr. Chairman: It would be interesting to find that out, if we could. Is there anything the minister wishes to say?

Hon. Mr. Kwinter: No. I appreciate your comments.

Mr. Chairman: It is good to have you come forward.

Mr. Grey: With all that is going on in this country with Americans dominating, I have just about had it. I had a resolution at a Canadian conference just a week ago--I was not planning to come to this--and at that Canadian conference. the people were talked out of passing a resolution that would have put two Canadians on their plan as trustees. They were talked out of it because, "There would be so much legal work to do." I am coming before you and requesting it. I think it is time we controlled our own destiny.

Mr. Chairman: I have not seen anybody put up his hand who is anxious to argue with you.

Mr. Grey: I hope not.

Mr. Chairman: Thank you very much for coming with that point.

Until tomorrow morning at 10 a.m., that is it. I warn you that on each of Wednesday and Thursday, a presentation has been added at 4:30 p.m. You will get a new schedule in the morning.

The committee adjourned at 4:18 p.m.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

PENSION BENEFITS ACT

TUESDAY, APRIL 14, 1987

Morning Sitting

STANDING COMMITTEE ON GENERAL GOVERNMENT

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Anderson, A., Research Officer, Legislative Research Service

Witnesses:

From the Association of Canadian Pension Management:

Vincent, A., President

Schnurr, G., Resource Person

Lee, D., Member, Board of Directors

From the Council of Ontario Construction Associations:

Frame, D., Executive Vice-President

Desmarais, P. J., Chairman, Alexander Consulting Group Ltd.

Foote, B. M., Director, Labour Relations, General Contractors' Section,
Toronto Construction Association

From the Ministry of Financial Institutions:

Kwinter, Hon. M., Minister of Consumer and Commercial Relations and Minister
of Financial Institutions (Wilson Heights L)

From the Board of Trade of Metropolitan Toronto:

Markham, I., Chairman, Pension Policy Committee

Sprawson, B., Member, Pension Policy Committee

Beswick, M., Member, Pension Policy Committee

From the Pension Commission of Ontario:

Salamat, G. P., Director of Pensions

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday, April 14, 1987

The committee met at 10:05 a.m. in room 228.

PENSION BENEFITS ACT
(continued)

Consideration of Bill 170, An Act to revise the Pension Benefits Act.

Mr. Chairman: We will have the printed submission. The first presentation is from the Association of Canadian Pension Management. We have Andrea Vincent, the president; Mr. Lee, a member of the board and Mr. Schnurr, resource person. Would you please come forward to the mikes and proceed with your presentation.

ASSOCIATION OF CANADIAN PENSION MANAGEMENT

Ms. Vincent: Good morning. We thank you for giving us the opportunity to present our views today. I am Andrea Vincent, the president of the Association of Canadian Pension Management, known as ACPM.

With me today is Douglas Lee representing the board of directors of ACPM of which he is a member. Doug is also manager of the Toronto office of Towers, Perrin, Forster and Crosby and he is an actuary. Gary Schnurr, an actuary with Towers, Perrin, Forster and Crosby is here as our technical resource person.

Briefly, the ACPM is a volunteer, nonprofit organization of people engaged in pensions and other employee benefit activities within corporations, associations and professional organizations throughout Canada.

We have passed around copies of our submission and of our survey that we took recently.

In addition, many of the details of Bill 170 have been discussed by other groups. We will therefore, make our presentation brief. On Bill 170, we commend the government for taking action to ensure that private pension plan regulations are in keeping with society's needs in areas such as earlier vesting and improved portability. We also fully support the moves in Bill 170 that deal with disclosure.

Implementing Bill 170 will be expensive for the private sector, but we feel confident that it can be done.

The commitment made by Ontario, Alberta and the federal government to ensure that changes are not retroactive, as well as their move towards uniformity is reassuring to the private sector.

I would like to touch on discrimination based on marital status. The intent of this section that would see increased pensions for those who do not have a spouse is questionable. Providing an increased pension of equivalent value to participants without a spouse is not consistent with the other provisions in the bill which require married participants to receive joint and survivor pensions.

During the long pension debate, a stated government priority has been protection of the spouse. The notion of single equivalents has never been studied.

Pre-retirement death benefits are often better covered by insurance tailored to meet the specific needs of the plan or the employees. If the employer is already providing equivalent death benefits under the insurance program, an exemption from this provision should be granted.

The moratorium on surplus withdrawals: It is one of the biggest issues to hit the private sector in the long time that I have been associated with it. Under defined benefit plans, the risks associated with investment returns, among other things, falls upon the plan sponsor.

I would like to go back to the 1970s when pension plans had deficiencies. Some of them were quite large. There was no question about ownership. The corporations were required by law to fund the deficiencies over a short period of time. It is astonishing that in the 1980s when there are surpluses that we are hearing nothing about the deficiencies. It is shortsighted to deal with today's conditions without thinking about future conditions when events of the 1970s can and will return. To expect employers to take all of the risks and give away the reward is naïve.

Inflation protection: Past examinations on inflation protection have, with the odd exception, seen people clearly divided. Governments, quasi-governments, universities and labour unions feel more comfortable with their ability to obtain additional financing for programs through tax increases, grants, etc. Corporations that have only one way to obtain money, by sale of goods or services, are generally not in favour of mandatory inflation protection. They know that increased labour costs can make them uncompetitive both nationally and internationally. Many have to compete with countries, in fact, other companies that are more productive and have lower expenditures for statutory benefits.

Most of the large corporations, and we basically represent the large corporations, do however, favour ad hoc increases and most of them grant them. Employees, quite a different category, seem to want inflation protection, but not if they have to pay for it.

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Over the past year the Association of Canadian Pension Management has become increasingly concerned about the future of the level of defined benefit plans in Canada. The concern started with the Dominion Stores court case on the surplus issue. We were shocked by the outcome. We then saw tax changes that made registered retirement savings plans look very attractive. Finally, we saw that Bill 170 was being debated a year after its introduction, and the surplus issue and inflation protection were again being put forward as issues.

We decided to conduct a survey to determine what, if anything, our members could do if inflation protection was mandated. Further, we felt it was important to know in what direction they might go if the costs of maintaining their current levels of benefits became prohibitive. For obvious reasons, we did not include union-negotiated plans, those being up to the employer and the employees.

I ask you to turn to the page after page 4 to look at the results of the surveys. In the first chart, you will see that the level of response was very

high; 340 sponsors responded, many more than we would have expected. They responded by telephone, facsimile machine, mail--just about every way you can imagine--and they responded quickly. This demonstrated the concern we thought was there but could have not verified without the survey.

We noted, quite surprisingly, that we could not find a distinction in the response by plan, size or members covered. We thought some of the smaller companies might be more cost-sensitive than the larger ones, but this was not borne out. Really, we found there was nothing we could put a handle on. We also found that thinking was more advanced on the issue than we had anticipated. Obviously, it is a very hot item with the corporate sponsors.

What was not surprising to us was the level of commitment by the plan sponsors to maintain retirement arrangements for their employees. Arrangements might take a different form, but there seems to be quite a commitment that sponsors would like to do something, bearing in mind that this is a voluntary system.

We will go to chart 2. Again, Gary, if you have any comments, please go ahead. In chart 2 we found that a very high percentage of the plans that were surveyed, over 44 per cent, were prepared to redesigned their plans so that costs would not increase. The others were undecided, but we left a comment section, and they were quick to jump in and make some very critical comments. They were saying, "We do not know what we are going to do, but we know it is going to be something," or something like that. They were the big commenters in the survey. We have attached some sample comments for your perusal, so you can get a better feel for what we were hearing.

In chart 3, of those who were decided, we tried to determine who they believed would bear the cost of the additional expense of mandatory inflation protection. You can see that an extremely high proportion felt the employees would have to bear it in one way or another, be it through reduced benefits, employee contributions or something. They were quite decided that they were not really prepared to increase their costs in this level. Many made interesting comments about other costs such as Bill 170, equal pay or increases in Workers' Compensation Board premiums. It seemed as if they were sensitive to increased costs due to other cost structures.

We then went on, and chart 4 demonstrates this, to try to find out what the decided would do. Did they have a feeling for what they would like to do? In chart 4, you can see that 42.9 per cent felt that a reduction in the benefit formula would be appropriate. That means going from a two per cent to a 1.5 per cent, or a final earnings to a career earnings. Those were the types of things they were talking about.

Converting to money purchase plans was very popular at 27.9 per cent. Winding-up of plans--winding-up of formal arrangement plans--is definitely there at 4.4 per cent. "Other" is at 18.8 per cent. A variety of people had not actually made a decision, but some suggested they might cut back their labour force, so they had other, various suggestions that we could not easily classify. My remarks are almost finished, so we can come back to the survey afterwards if anyone would like to, if that is appropriate.

Bill 170 has been a long time in the making. Much of it is very good, and I think that people will be able to live with it. We believe earlier vesting, improved portability disclosure and better survivor arrangements will ensure that the needs of the changing society are met and will help the coverage issue. We believe that defined benefit plans have an important role

to play, both in the capital markets and for protection for the employees. Action must be taken to ensure that employers are treated fairly in the surplus issue. This is a very critical issue to us.

We also believe greater coverage would be more likely obtained through a system that is as flexible and uncomplicated as it can possibly be. We seriously believe that mandating inflation protection on top of all the other changes is going too far. Ad hoc adjustments are working.

Governments recognize that inflation protection is too costly and have moved to limit inflation components in personal exemptions, family allowance and things like that. We believe there are more constructive ways to handle inflation protection. If the governments provide a base of old age security and Canadian pension plan and employers add to that with private plans and ad hoc increases, it seems reasonable to expect employees to participate. After all, inflation is everyone's problem. It should not be confined to the employers.

It is reasonable to expect employers to provide jobs, safe working conditions, competitive salaries and benefits. A good business practice dictates that the employer must remain competitive, both here and abroad.

That concludes my remarks. We would be pleased to answer questions and then, if we feel any issues are missed, we might end with a few comments.

Mr. McClellan: I do not think I will get into the surplus question today. I am getting sick of it. In the final paragraph on the first page, you mention how grateful the private sector was for the commitment made by Ontario, Alberta and the federal government to ensure that changes are not retroactive. So, on the issue of retroactivity, what do you understand to be the nature of Ontario's commitment not to make two-year vesting retroactive?

Mr. Schnurr: To make the two-year requirement retroactive to benefits that have been earned in respect of past service would, in effect, change the employer's implied pension contracts that it had made with its employees, without remedy to the employer. We feel it is appropriate to make the change on a prospective basis.

Mr. McClellan: I will come back to that, but with respect to the nature of the commitment, have you had some communication from the Ontario government?

Ms. Vincent: Are you referring to the original Bill 170 that came out on March 5?

Mr. McClellan: Your understanding of the commitment is the language of the statute. Is that what you are saying?

Ms. Vincent: Yes.

Mr. McClellan: And no other information or discussion?

Mr. Schnurr: That is right.

Mr. McClellan: Getting to the issue, I do not understand how you can argue that you are altering the contract. Is it not the case that employees who are not vested are nevertheless expected to give up a portion of their wage--their compensation package--and that wages are set aside and put into

pension accounts on their behalf, whether they are vested or not?

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Mr. Lee: I think you are addressing whether pension contributions are deferred wages or an exchange of wages for a benefit.

Mr. McClellan: No. I am asking just about the practice. Is it not the case that whether you are vested or not, a portion of money that would otherwise go to your take-home pay is set aside in a pension fund and that the money is sitting?

The employer's contribution on behalf of the employee is deposited in a pension account as part of the annual service contribution and sits in the fund, drawing interest, whether an employee is vested or not.

Mr. Lee: The employer makes a contribution. If you are talking about a defined contribution or money purchase, there is a direct allocation of the employer's contribution to the employee. If you are looking at a defined benefit plan, there is no direct allocation. As a matter of fact, the actuary assumes that a certain number of people terminate, and they terminate on a basis where there is no vested benefit. There is no direct allocation of a specific number of dollars to a specific employee.

Mr. McClellan: But if somebody is bargaining--Are you saying that the actuarial assumptions about turnover rate and things like that go--

Mr. Lee: That is exactly what I am saying. Yes, they do.

Mr. McClellan: We can pursue that with the Canadian Auto Workers when it is here tomorrow.

I gather that you are arguing against any kind of retroactivity in vesting.

Mr. Lee: That is correct.

Mr. McClellan: That will mean that this legislation will probably take almost a generation before it has any effect.

Mr. Lee: Not really. Are we not talking about the difference between two and 10 years? That is not a generation.

Mr. McClellan: Well, at age 45. The 10-year and age-45 rule continues to apply, does it not?

Mr. Lee: Yes.

Mr. McClellan: The previous superintendent of insurance, Mr. Bentley, told the select committee on pensions when we were holding hearings on this issue in 1981 and 1982, that because of the stringency of the 10-and-45 rule, only about 10 per cent of pension contributors actually received a benefit.

Mr. Lee: I cannot comment on that statistic because I have not seen it.

Mr. McClellan: I am just sharing that with you. That is what he

indicated to us was the consequence of the 10-and-45 rule.

The private sector is coming before us not only arguing against inflation protection, but also arguing that we cannot have vesting rules changed that have the effect of depriving all but 10 per cent of pension contributors of an entitlement to a vested pension benefit.

Some of us are left asking ourselves where is the beef in this legislation? Where is the benefit?

Mr. Lee: If I might comment on that, we are not debating as to whether the two-year vesting is appropriate. It is a question of retroactively changing that benefit, and I think it does take time before you make major changes.

Surely you should not expect industry or corporations to solve a problem that has existed for a long time in a matter of a year or two. I think it is a question of financial responsibility and commitment.

Mr. McClellan: Sure, but the effect, as I say, will take many years before two-year vesting, which applies only to money invested on the pensioner's behalf after--whenever the effective date is now--January 1987, January 1988 or whenever that is. It will take a long time before any individual receives the benefit of that.

In the meantime, all money that is currently invested in pension accounts escapes the 10-and-45 rule and, presumably, much of it will revert to the pockets of the employer.

Mr. Lee: I do not have extensive statistics, but as a consulting actuary, I have certainly looked at a number of what we call age service distributions of many large pension plans. Typically, what you see is that the average age is usually in the low 40s and the average service is eight to 10 years. If that is representative of the world out there--and I do not know whether it is; I am sure there could be or maybe there are studies done--we are not talking about a huge length of time before the individual is fully vested, not only in the benefits accrued after January 1, 1987, but also in the benefits accrued prior to January 1, 1987.

Mr. McClellan: That does not jibe with the information that was provided to us, I assume on the basis of--

Mr. Lee: Mr. Bentley was not the predecessor superintendent. It was Mr. Maynard, if I remember correctly. I do not know when Mr. Bentley retired, but it had to be four or five years ago.

Mr. McClellan: That is when the committee was having its hearings. We have been running around this block now for almost 10 years.

Mr. Lee: I understand that.

Mr. McClellan: I do not have any other questions, except to state again how much I disagree with you on the basic issue of the property question. How you can define an employee's funds in a pension account as somehow the property of the employer is beyond me, as much beyond me as if you were to say that if I put my money in a bank, the bank manager could draw a line at a certain level and say any interest earned on my account above this level magically became the property of the Canadian Imperial Bank of Commerce.

Mr. Lee: No. I think you have misinterpreted what I said.

Mr. McClellan: I do not think so.

Mr. Lee: I am not saying that the employer contribution is necessarily the property of the employer. I am saying that the employee has exchanged the right to compensation for a promise of a benefit in the future, and that benefit is going to be paid under certain conditions, much as if I pay a life insurance premium and do not die, I may not collect.

Mr. Guindon: You cannot collect if you die either.

Mr. Lee: It is difficult.

Mr. McClellan: Again, I find it ironic that only the socialist is upholding the notion of property value and property rights here.

Mr. Chairman: I do not believe there are other questions, but you mentioned you might wish to sum up. Please do.

Ms. Vincent: We have heard some comments in the past about the lack of coverage, shall we say. We feel the coverage numbers are not totally accurate. We do not think the 38 per cent you were hearing the other day reflects the actual numbers. We could provide the committee with an update on what we think are more realistic numbers, if you would like us to do that. We can either send it to you or make it available.

Aside from the coverage issue, I think it is really important--I am very interested in Mr. McClellan's views on what people bargain for and what they do not bargain for. If the employees or the bargaining people did want something more and were prepared to set aside more of their take-home pay for it, since it is bargained for, I suspect they could do that. The bargaining has not been one-sided. The unions have had say in many of these plans, and if they have not elected to go for survivor benefits or two-year vesting or whatever, instead preferring to take their money somewhere else, I suspect they should be able to do that. People should be able to consume and spend as they see fit.

Mr. McClellan: I think we had a firsthand look at bargaining tactics yesterday when the General Motors representatives were in here telling us, on the one hand, that they provide inflation protection up to a level of 82 per cent for their employees and, on the other hand, that if they were mandated to provide the same kind of inflation protection, they would close down the auto industry in Ontario.

That is what I call bargaining clout. I do not how very many people are supposed to stand up to that kind of economic blackmail. That is the reality. That is where the power relations are, and I am sure you realize that.

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Ms. Vincent: I think you are underestimating the unions.

Mr. McClellan: We know from the track record what the strongest union has been able to get from the largest corporation. They are saying, "If you cross this line, we are prepared to bail out," even though the economic argument is quite obviously bunk, since they demonstrate in a minute that they are able to provide inflation protection up to a level of 82 per cent.

It seems to me that it would be more helpful for folks like yourselves, who have the kind of expertise that we and the ministry need, rather than coming forward with this kind of intransigence, to say whether there are ways and means of devising actuarial systems that cushion the impact. General Motors has obviously been able to cushion the impact of providing 82 per cent inflation protection for its employees between 1973 and 1983 without affecting its profit picture or its competitive position or anything else.

Ms. Vincent: Do you not have a task force examining that very issue right now?

Mr. McClellan: The task force has been turned into a feasibility study by the minister. The task force will listen to the kinds of presentations that you and other business interests are making, and I have no doubt at all that the task force will come back with the new term of reference set by the minister, "Is this feasible or not?" The answer will be no, because the entire business and finance community is presenting this scenario of an economic end of the world if legislation mandates what many corporations are already providing on a so-called ad hoc basis.

Mr. Lee: May I comment? I will not try to defend General Motors. They are more than competent to do that on their own, and I think they did that, according to Mr. Sheppard's article in the Globe this morning. I might make one comment, however. My firm surveyed, as mentioned in our presentation last week, about 250 companies, and approximately 80 per cent of those were providing ad hoc increases. The critical point there is that it does depend on the company's ability to pay. It is not as though they are doing it all the time, nor are they doing it for 100 per cent of inflation.

The part that concerns many corporations is that they lose control with mandatory inflation protection, not that they are not going to do it if they can, but that they will have no choice about it. The other alternatives that are open to them, such as winding up their plans and going for a registered retirement savings plan or changing to a defined contribution, will appear to be very attractive.

The very fact that 146 respondents out of 150 in the Association of Canadian Pension Management survey stated that they would not be able or would not be prepared to absorb the cost of mandatory inflation has to provide you with some kind of an indication of what many plan sponsors are going to do.

Mr. McClellan: At the same time, this is the same group, 80 per cent of which is providing some form of inflation protection.

Mr. Lee: Exactly. It is a question of whether it is mandatory. That is a very key point in the eyes of plan sponsors.

Mr. Schnurr: It is the question of flexibility for the plan sponsors.

Mr. McClellan: It is a question of power and a question of controlling the amortization. I do not think it is beyond the wit of people to devise amortization schedules and reconciliations and cycles of adjustment that help people to cushion some of the costs so that there is inflation protection over time. We know from historical experience that the majority of the larger plans do provide inflation protection over time to fairly impressive levels.

Mr. Lee: Exactly. I think if you were to examine this--it is

certainly my understanding--if you looked at what had happened, at that study we did, approximately 80 per cent of 251 had provided inflation protection over the last five years. I suspect that if you look back at the 1970s, when it was a question of getting hammered by very large unfunded liabilities, there was not a lot of inflation protection at that time. We were talking about basic survival. The headlines we read were the question of whether your pension plan was solvent, not a question of whether you were going to get another benefit.

Mr. Schnurr: There is one more point on the question of flexibility. We have talked about General Motors; maybe we should talk about Chrysler. If Chrysler had been forced to provide mandatory inflation protection a few years ago, we might not have a pension plan at Chrysler to talk about.

Mr. McClellan: That is what GM said would happen. That is what they said yesterday.

Mr. Schnurr: That may well be true.

Mr. McClellan: There is a big gap between historical performance and predictions about future catastrophe that is very difficult to reconcile. I have gone on longer than I should have.

Mr. Chairman: Thank you very much, folks.

The next presentation is from the Council of Ontario Construction Associations. I recognize David Frame, the executive vice-president. You might indicate to us the other gentlemen, whose names I have here but whom I cannot identify.

COUNCIL OF ONTARIO CONSTRUCTION ASSOCIATIONS

Mr. Frame: Certainly, Mr. Chairman. As you said, we are COCA, the Council of Ontario Construction Associations. To my far right is Ronald Littlejohn, who is treasurer of Eastern Construction Co. Ltd. To his immediate left is Brian Foote, who is director of labour relations, Toronto Construction Association, general contractors' division. Beside me to my right is Pierre Desmarais, who is chairman of our pensions committee and also chairman of the Alexander Consulting Group.

Mr. Desmarais is going to read you our statement, which has been placed in front of you.

Mr. Desmarais: It is a pleasure being here today. I would like to say right at the outset that the brief itself does not go into too much detail concerning multi-employer plans, but we would like to make a very brief presentation at the end of it.

The Council of Ontario Construction Associations, COCA, is the official voice of the construction industry in Ontario. Membership in COCA is through 43 local mixed construction associations and trade organizations which, in turn, represent over 7,000 construction workers of all sizes across the province. COCA members include construction contractors, manufacturers and suppliers.

COCA's mandate is to speak for Ontario's largest industry on all matters of existing or proposed provincial legislation which might have an impact on its members, with the single exception of labour relations issues related directly to collective bargaining.

The issue of pension reform has been identified by COCA members as one which has a significant potential impact on their business operations. The construction industry has been generally supportive of both provincial and federal initiatives in pension reform, and COCA has participated actively in the development of new legislation in this area.

This brief to the standing committee on general government of the Ontario Legislature outlines COCA's general support at this time for the provisions of Bill 170, An Act to revise the Pension Benefits Act, and the proposed regulations to it. It also comments specifically on certain provisions of concern to construction employers and offers reasonable modifications which COCA believes will serve to strengthen and enhance the objectives of pension reform.

COCA supports the principles and objectives of pension reform, as stated by the government and as developed by Bill 170 and the regulations. Construction employers currently work with the government by maintaining many private plans with equitable access to benefits by all members. COCA believes this should be strengthened and expanded to all sectors of the economy.

In terms of specific proposals contained in the legislation, COCA has carefully reviewed certain sections of direct concern and is prepared to support, with limited qualification, the following major provisions.

Sections 26 to 31, disclosure of information: COCA recognizes that plan members and their spouses have the right to reasonable access to information regarding their benefits and obligations under the plan. The increased disclosure requirements, however, may prove to be costly and may lead to the implementation of alternatives, such as group registered retirement savings plans and deferred profit-sharing plans.

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Subsection 32(2), eligibility: COCA agrees that plan membership should be open to both full-time and part-time employees, as defined, after two years of service, regardless of age.

Subsection 34(4), continuation after retirement age: COCA supports the provision to allow employees continuing to work after their normal retirement age to continue to accrue pension benefits up to the maximum allowable under the plan.

Section 42, early retirement option: A plan member, within 10 years of his normal retirement date under the plan, will be able to take early retirement and receive an immediate pension. COCA supports this proposal on the basis that the pension may be actuarially reduced.

Section 43, transfer: COCA supports these provisions enabling increased portability of plan benefits for plan members entitled to deferred pensions. This support is contingent on those vehicles containing similar restrictions to those contained in the act.

Subsections 45(1), (2) and (3), joint and survivor benefits: COCA agrees with the provisions to stipulate that where a person with a spouse is about to receive the first payment of a pension, the pension must be in the form of a joint and survivor benefit, unless both choose otherwise in section 47, providing no less than 60 per cent of the pension to the survivor. COCA supports this proposal on the basis that the survivor's pension may be

provided on an actuarially equivalent basis of the normal form.

Section 52, payment on marriage breakdown: COCA agrees with Bill 170's proposals for dividing pension credits on marriage breakdown. COCA believes this is a needed clarification to family law reform in this area.

Subsection 59(2), interest: It is reasonable that interest, at the prescribed rate, be credited to employee contributions to their pension plan.

COCA also supports changes to pension legislation reflecting compliance with the Canadian Charter of Rights and Freedoms, such as those barring discrimination in pension plans based on age or sex.

COCA recognizes that its general support for Bill 170 will result in some new administrative burdens and increased costs for employers. Construction employers, however, are prepared to accept these impacts to achieve more perceived equity in private pension plans.

In order to minimize the additional administrative and cost burdens arising out of Bill 170, however, COCA recommends a number of modifications to certain specific provisions of the bill. COCA believes these changes can moderate cost increases for employers while enhancing the attainment of the objectives of the legislation. Modifications proposed are as follows.

Section 25, advisory committee: COCA does not disagree in principle with an advisory committee to monitor administration of the pension plan, but recommends that this provision be applicable only to plans having more than 50 members. To extend the provision to plans with fewer than 50 members will create undue administrative and cost burdens to small businesses without the staff or facilities to accommodate the requirements of an advisory committee.

Section 35, comparable plans for part-time employees: Under subsection 32(3), part-time employees will be eligible to join an employer's pension plan after two years of service at stipulated earnings levels. COCA supports this provision in concert with section 35, which will allow the employers to establish separate but comparable plans.

Section 35 uses the criterion of providing "pension benefits and other benefits reasonably equivalent" to those provided full-time employees. COCA recommends that the legislation provide more specific criteria defining what constitute comparable plans for part-time employees.

Clause 36(1)(c), right to pension: The minimum vesting period and locking-in period are changed to two years' membership in the plan, applicable to all pension benefits related to employment after January 1, 1987.

COCA supports the move to two-year vesting and locking in, but recognizes that employers might be more inclined to liberalize vesting on both a retroactive basis and a prospective basis if the legislation were to include a transition period to allow for proper planning and administrative adjustments and costs. It is, therefore, recommended that the minimum vesting period be five years until January 1, 1992, after which it would become two years.

Subsection 40(3), benefits; 50 per cent rule: Employers will now have to fund at least 50 per cent of pension benefits earned by plan members after January 1, 1987. COCA can support this provision if it is modified to stipulate that the rule is applicable only to plans which do not provide for

indexed pensions at prescribed minimum levels.

This suggested modification parallels the federal policy in the matter and recognizes that employers with plans indexed at a minimum level are already providing a benefit which is considerably in excess of this.

Subsection 48(1), remarriage of spouse: COCA agrees with the principle that survivor benefits should not be terminated by the remarriage of the recipient. However, as a matter of principle, and because there is a potentially hidden liability for employers, it is recognized that this provision should not be made retroactive to pensions already being paid.

Subsections 49(1) to (4), pre-retirement death benefit: Section 49 provides that when a person dies prior to the start of payments under a pension plan and is entitled to a deferred pension, that person's spouse will receive an annuity equal to the deferred pension.

While COCA does not oppose the intent of this provision, it is recognized as a very costly aspect of pension reform legislation. To help in offsetting the financial impact on employers, COCA recommends that the legislation should provide for an offset of a payment under a group life insurance plan to the spouse as prescribed.

As well, COCA also recommends that this section of the legislation should not come into force until January 1, 1992, to allow for a reasonable transition for employers to prepare administratively and financially to meet the requirements.

Section 54, discrimination--marital status: COCA does not agree with the proposal to provide equal commuted values to married and single persons on retirement. Employers should have the right to provide higher total commuted values for married employees in order to provide a spousal benefit. Further, we believe that the implementation of this would be contrary to the pension reform objective of providing pensions to spouses.

Subsections 55(1) to (4), pension reductions: Offsets to pensions resulting from entitlement to benefits under the Canada pension plan, Quebec pension plan and the Old Age Security Act will be regulated by a prescribed formula. In the future, reductions from OAS entitlement will be prohibited.

COCA recommends that further clarification is required to define Canada and Quebec pension plan entitlement at termination of service. As well, COCA recommends that old age security pensions should continue to be used in defining minimum pension entitlement under the pension plans.

Moving now to issues of a more technical nature contained in the regulations to Bill 170, COCA has also thoroughly reviewed specific provisions of direct concern. As with the bill itself, COCA supports the overall thrust of the regulations. That support is qualified by the modifications proposed for the following specific provisions.

Sections 4 to 11, funding: COCA supports the change in solvency standards which will accelerate funding when a plan cannot meet its termination liabilities. In fact, the council recommends that these standards should be strengthened and should eventually lead to the elimination of the pension benefits guarantee fund, as described in sections 83 to 87 of Bill 170.

The going concern valuation and the rate at which unfunded actuarial

liabilities are funded should be left entirely to the plan sponsor, his actuary and his accountant.

Section 24, interest and commuted values: COCA supports the basis proposed for interest rates credited to employee contributions and the basis used for determining commuted values but notes that the specifics of the provisions could result in frequent changes in applicable factors in a given calendar year. This would place additional undue and unnecessary administrative burdens on the plan administrator.

To avoid this additional burden on employers, COCA recommends that the basis for calculating interest rates credited to employee contributions and commuted pension benefits values should be fixed for each calendar year and based upon values published by the commission before January 1 of each year.

Sections 17 to 20, commuted value and portability: COCA supports the intent of the specific proposals in these sections of the regulations. It is noted, however, that throughout the practice is to make the plant administrator responsible for verifying the terms and conditions of locked-in registered retirement savings plans.

As this is another provision which would result in undue and unnecessary administrative responsibilities for employers, COCA recommends that the commission should publish at regular intervals a list of financial institutions with approved locked-in registered retirement savings plans. Such a provision would create minimal problems for the commission and would not in any way undermine the objectives for increased portability. It would, however, relieve employers of an onerous responsibility.

Having stated its overall support with minor modifications to Bill 170 and its regulations, COCA wishes to restate its categorical opposition to any proposed mandatory indexing of pension benefits or restrictive surplus withdrawal provisions. COCA intends to deal with both of these issues in greater detail in the immediate future in a separate submission.

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At this time, however, we believe the question of inflation indexation is so important that a few key points should be made. The costs to employers of indexed pension benefits cannot be determined without studying each case separately, but they are certainly high. The Ontario Chamber of Commerce reports that the few cases it has studied show that fully indexed pensions would cost anywhere between 1.3 per cent and 14.6 per cent of payroll.

Faced with such costs, employers will turn away from defined benefit plans that provide greater security to employees. Some companies may change their existing plans, require higher employee contributions or simply abandon their plans altogether. In the case of unionized employees, types and levels of pension benefits are determined by the bargaining process. By considering indexation of pension benefits, the government also risks drastically altering the delicate balance of power in the collective bargaining process.

A particularly disturbing aspect of indexed pension benefits is that it does nothing to help the 60 per cent of Ontario employees who are not members of private pension plans or members of defined contribution and profit-sharing plans. Therefore, indexation in fact works against the objective of encouraging employers to broaden voluntarily private pension plan coverage to all Ontario employees.

In summary, the Council of Ontario Construction Associations supports the Ontario government's basic policy and initiatives to bring about pension reform. The council supports the overall thrusts of Bill 170 and its regulations.

Specific recommendations are being offered with respect to the bill and the regulations. While not altering the intent or effectiveness of the applicable provisions, these modifications would serve to minimize the additional administrative burdens and costs that employers will bear under the new legislation.

COCA opposes any provisions in the new legislation that would bring about mandatory indexing of benefits or stipulate restrictive surplus withdrawal provisions. These issues will be dealt with in a separate submission.

Now, gentlemen, I would like to turn it over to Mr. Foote with his comments on multi-employer pension plans.

Mr. Foote: Thank you very much. We are also represented on another committee which will be making submissions to you. It is called the Canadian Co-ordinating Committee for Jointly Trusteed Multi-Employer Pension and Benefit Plans. We have left our comments with respect to multi-employer plans, which are so prevalent in the construction industry, in the hands of that committee. I personally am a member of that committee.

We would raise one concern here. First, multi-employer plans in Ontario in the construction industry are, almost without exception, drawn pursuant to collective agreements which are negotiated freely between contractor associations and trade unions. Those plans provide for at least equal trusteeship of union and management, and in some very significant cases, have all union trustees in place on those plans.

Traditionally, there has been a view in the industry that an employer's liability is limited to the timely contributions required pursuant to the collective agreement, and there the liability ends. The reason for that is that in typical plans in the construction industry, you may have up to 500 employers contributing to a plan where they have little or, in some cases where it is totally union trusteed, no say over the benefits provided by that plan. Thus, we believe strongly that that principle, which incidentally has never been objected to by the trade union movement in the construction industry, must be maintained; that liability is limited to contribution.

That takes us to section 76 of the proposed Bill 170. That section does not create a problem for us in most of its reading. However, we are concerned with regard to a potential interpretation with regard to one portion of that section; that is, subclause 76(1)(b)(ii). It speaks to the windup of pension plans and employer liability in respect of vested benefits. It is our position that for multi-employer plans, simply the employer liability must be limited to the contributions pursuant to the collective agreement if there is a windup of the plan.

We believe that section 78 may give us the right, pending the approval of the Pension Commission of Ontario and our actuary, to reduce benefits in the event of a windup. However, we have a lingering concern with regard to potential liability that may be created by that one section.

I would point out that plans may and have been terminated in the

industry through no involvement of the employers. An example would be through a decertification of a union and a replacement of a bargaining unit by another, competing union, a so-called raid. For those reasons, we feel very strongly that liability must be limited and we would like to see some clarification from the committee in that regard.

I am sorry this is not included in our brief; it is a late development and it will be put to you in writing immediately following our presentation.

Hon. Mr. Kwinter: I would like to get clarification on your position. From what you tell me, you perceive your participation in this as a defined contribution plan.

Mr. Foote: Most of the plans in the construction industry are defined contribution. They are also defined benefit. They are somewhat unusual.

Hon. Mr. Kwinter: That is what I want to clarify. If it is a defined contribution plan, I take your point that if there is a windup then all you are liable to is your contribution because that is all you contracted to provide. But what happens if it is a defined benefit plan?

Mr. Foote: It is both.

Hon. Mr. Kwinter: What about those aspects of the defined benefit plan where you have promised to deliver a benefit?

Mr. Foote: What we are saying is, the definition of that benefit is out of the hands of the vast majority of employers. You may have 500 employers covered by a multi-employer plan in Ontario, of which only three or four sit as trustees of that plan, often acting incidentally for associations that some of those employer groups have nothing to do with or, as in the case of the eastern Canada pension fund of the Labourers, that are totally union trustee. Obviously, the employers have nothing to say with regard to the definition of benefit. That is the difference.

Hon. Mr. Kwinter: Do they have any say as to whether they participate in the plan?

Mr. Foote: None. They are bound to the collective agreement; they must participate. That is by operation of the Labour Relations Act pursuant to the province-wide bargaining procedures set out in that act.

Incidentally, I would point out that I do not think you would get any argument whatsoever from the building trade union movement either in that regard. I am sure you will not. It is a very narrow point and, as I point out, the wind-down of a plan may have nothing to do with any employer influence. As a matter of fact, it may be the influence of the employees choosing another bargaining unit, which is not uncommon in our industry.

Mr. Lane: I suspect the construction industry has a fairly high percentage of part-time employees from one time to another. I notice at the top of page 6, you are suggesting that the legislation be more definite, pointing out the comparable pension plan for part-time employees, but I do not see where you say anything further on that. Can you flesh that out a little?

Mr. Desmarais: I think we have probably fleshed it out in our brief here to the extent that we can. Really, what we would like to see in the regulations of the act is some clarification as to what the criteria are for a

plan that is comparable to the plan for full-time employees. At least, what are the guidelines that an employer should follow in setting up such a plan, or is it just going to be a question of submitting it to the commission and the commission saying it is not acceptable and you have to do this or that? If the commission is going to do that, then presumably it has some guidelines that it is following in making those decisions. I guess we would like to see the guidelines, perhaps not part of the bill itself but as part of the regulations.

Mr. Lane: It is a concern the way the bill reads now.

Mr. Desmarais: Yes.

Mr. Chairman: Any other questions? If not, thank you very much.

We have the Board of Trade of Metropolitan Toronto; Mr. Markham, chairman of the pension policy committee. Would you introduce the participants, Mr. Markham, please.

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BOARD OF TRADE OF METROPOLITAN TORONTO

Mr. Markham: I am Ian Markham, a partner with Peat Marwick and Partners in the actuarial and benefits department. To my left is Barrie Sprawson, managing principal of Sibson and Co., a consulting firm. To my right is Michael Beswick, associate director of pension policy and communications for OMERS, the Ontario municipal employees retirement system.

Thank you for the opportunity of coming and addressing this group. You have before you our submission. I will just give you a little bit of background about the three of us. We are members of the pension policy committee of the board of trade. As such, it was our committee which drafted this submission and the submission has been approved by council.

In general terms, we support many of the provisions that are contained in Bill 170, but what we would like to talk about today are some issues along a theme. The theme is areas that could create profound change in the pension system in Ontario if they go through unchecked. Indeed, some of these could have long-term effects on pension coverage in the province.

I am going to start off talking about inflation protection. You will notice that inflation protection was not actually written out in our brief. That was because Bill 170 does not incorporate the subject of inflation protection. However, what I will spell out is the board of trade's position on inflation protection for your information. I will then pass over to these two gentlemen.

First of all, as you are well aware, business is most concerned about the possibility of mandating inflation protection for both defined benefit and defined contribution pension plans. If the costs of mandatory inflation protection are to be borne by employers, the cost increases will in many cases be very significant, even if the level of inflation protection is held at something like 60 per cent of the increase in the consumer price index.

Plan sponsors are being hit right now with many other cost increases, all of them at the same time, and this could well be the straw that breaks the camel's back, if you are looking at defined benefit plans. What seems to be

inequitable to us is that it is the most generous defined benefit plans that are the ones that have to bear the most cost increases, and that is inequitable because many of these employers do not need to have a pension plan at all.

If inflation protection were to be introduced and it were to be made retroactive to cover existing pensioners for benefits earned to date, that would affect mature plans--that is, the plans that have been around for many years and have many pensioners--very severely and much more so than new employers coming in from other countries that have no pensioner groups whatsoever. Again, we have an inequity between the imposition of cost increases on the mature plans compared to those offshore competitors.

So far, I have talked about those employers who are forced to or decide to absorb those cost increases themselves. There are going to be employers who will pass on some or all of these cost increases to their employees, either through reduced benefit accruals in future or, indeed, through other elements such as low wage increases and so on.

The subject of inflation protection, if it is introduced, would be against the consensus. So far the federal government and Alberta have not introduced such provisions, and it bothers us that we have been seeing the provinces and the federal government working together now for several years to try to come up with a uniform position; we thought we had it and now we seem to be moving away from that again. This is of great concern particularly to employers who have employees in more than one province.

There are many companies that do provide ad hoc increases; that is the appropriate way of dealing with it. We would like to point out as well that all members of pension plans in Ontario already have a level of inflation protection provided through the Canada pension plan and old age security. That provides a basic level, and in our opinion, ad hoc increases for the private plans are the most appropriate way of continuing to provide for inflation protection.

That is the end of that subject. We are trying to keep our points fairly brief. I wonder if I might pass across before we come back to any questions, if that is all right. I will now pass to Barry Sprawson, who is going to talk about surplus moratorium, which is on page 17 of our brief.

Mr. Sprawson: I would like to address this issue of surplus. Recently, a moratorium was placed by the pension commission on all refunds of surplus assets from all ongoing defined benefit plans registered in Ontario. The moratorium will not be lifted, we understand, until the release of the recommendations of the working group which has been set up to study mandatory indexing of pensions.

The issue is basically that employers look for superior long-term investment returns and in doing so they have to take investment risk. In the same way that they are required to refund for deficits in years in which they receive poor returns, they also expect to be able to utilize any surpluses to lower their funding costs in years of good returns.

Restrictions on the use of surplus assets reduce their incentive to maximize the pension fund's investment return, discourage accelerating funding in profitable years and discourage the maintenance of the continuation of their pension plans. This reduces the ability of the plan sponsor to be able to afford benefit improvements.

The vast majority of pension plan members in Ontario belong to defined benefit plans. The uncertainty created by the moratorium on surplus refunds and the apparent linking of surplus assets and mandatory indexation of pensions put a great deal of pressure on plan sponsors to switch to defined contribution pension plans or worse, a switch which may not be in the best interests of the plan members and their surviving spouses.

We have a strong recommendation that the government of Ontario, through the pension commission, remove its moratorium on surplus refunds and instead leave these issues to be dealt with through the judicial system. It is the courts that should decide which party owns these surpluses.

As a postscript, I served for seven years on the pension commission and I think the best way to solve this problem is to put it in judicial hands.

Mr. Beswick: I would like to speak to section 54. Section 54 was an unexpected feature of the recent act revisions and its thrust is to equalize the value of post-retirement benefits payable to single and married members. The reason given for this is the Charter of Rights, but there is really no such explicit requirement in the charter. Like much else in pension plans, we believe the current practice is a long-standing and acceptable practice in a free and democratic society, one which it is unnecessary to change.

In addition, we feel that section 54 penalizes pension plans which have introduced generous post-retirement spouse benefits and definitely discourages such improvements in the future. As we all know, elderly survivors are often in very serious need and it would be unfortunate to discourage improvements in their potential income.

Nor do we feel the workability of this provision is clear. Anomalies are created in plans with generous spouse benefits, Revenue Canada problems could ensue and it is difficult to choose appropriate actuarial assumptions for funding.

Finally, Ontario is alone in this provision. Neither the other provinces nor the Canada pension plan have accepted it. We feel this creates inconsistencies for both plan members and plan sponsors and so we very strongly feel this section 54 in the act should be dropped.

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Mr. Markham: I am going to finish off on this general theme, if we could return to page 14 of our brief, what we have termed "excessive regulation." There are some examples in the act, and in particular in the regulations, which cause concern to all pension plan sponsors. We want to make sure we do not have legislative overkill in Bill 170 and its regulations. I will just cover a couple of points.

The first of them is the solvency valuation, which is a concept introduced in the regulations. The solvency valuation basically is done on a windup basis and is something which will be required wherever an actuary has a feeling or is of the opinion that if the plan were to be terminated, there would be an unfunded liability resulting. If the actuary has the slightest suspicion that this might be the case, the actuary would be forced to do a full windup valuation for the pension plan, even though it is not being wound up.

Being an actuary myself, I can tell you from experience that windup

valuations take a lot more time than ongoing valuations. They cost a lot of money and if we have to do these things accurately, then there are severe cost increases that we as actuaries would have to impose on our clients in order to accomplish this.

Our feeling is that this solvency valuation is being introduced primarily as a means of allowing plan sponsors to fund experience deficits over a period of longer than five years. Currently, they are allowed to fund them over five years and they can exceed that only if they use the existing test valuation, which is a rarely used feature of the regulations.

What we would like to recommend is that if a plan sponsor is willing to continue to fund experience deficits over a period of five years or less rather than the more lenient 15 years which is being considered in the regulations, he would not have to do solvency valuations.

The trouble is that solvency valuations also come in in other areas of the regulations. For example, the premiums to the pension benefits guarantee fund are based on solvency liabilities and the amount of surplus which can be taken out of a pension plan, if the moratorium is lifted, is also based on solvency liabilities. Again, we would prefer to allow plan sponsors the opportunity of not doing those valuations and instead using ongoing liabilities for all of these purposes.

The second point relates to benefit statements. There are some new statements that are being introduced, statements for terminated members with vested entitlements. The regulations include many, many items which would have to be put into those statements. In our opinion, there are far too many items. It is a nice idea for employers to be able to give information to terminating employees, but we would rather see the regulations spelling out the minimum rather than the optimal amounts.

Finally, we believe that the deadlines for these benefit statements are too tight. There are going to be many plan sponsors who cannot meet the 30-day deadline for getting these statements out to retiring members or surviving spouses after the member has died.

That is the end of our formal presentation. I will be happy to take any questions.

Mr. Davis: I just want your comment on the new search-and-seizure rules. Am I correct in my understanding that this now does not occur at all?

Mr. Markham: I will take that one.

I have heard that these new search-and-seizure rules are meant to be less tight than they were in the past. Our concern is that in fact the pension commission has only had to use so-called search-and-seizure rules on very few occasions in the past many years. It bothers us to see the pension commission being given in writing the power to go into an organization. The plan sponsor may not be aware of whatever his rights are under the act and the pension commission can basically search for any documents that it needs.

Since this has been a provision that has been used very seldom by the pension commission in the last 20 years, we would rather see that the pension commission get the approval of a judge before it decides to take up these provisions.

Mr. Davis: In the section it says "the superintendent" or "any person designated by the superintendent." Do they have officials now who can come in and do those search-and-seizures?

Mr. Markham: I cannot really answer that since it is used seldom.

Mr. Davis: Perhaps the minister could answer it.

Hon. Mr. Kwinter: Yes, the superintendent can designate people.

Mr. Davis: Do they do it now?

Hon. Mr. Kwinter: I assume they have done it, as was indicated, on rare occasions. Ms. Salamat will be able to tell us. What would you say the number of times is?

Ms. Salamat: Not very many.

Mr. Chairman: I think we cannot get away without recording that, so you had better come up to one of the mikes.

Ms. Salamat: At the present time, we have powers under the act to inspect and to obtain information for the purposes of ensuring that the act has been complied with. We use these powers to go into companies at least once or twice a year and generally it is to collect information.

Mr. Davis: Can I just follow up for a moment? Do your powers now allow them to seize records and take them away?

Ms. Salamat: It is not specific. It is a general authority under the legislation right now.

Mr. Davis: But you are now going to make it specific?

Ms. Salamat: It is going to be specific. My understanding of the new provision is that it is in accordance with the government directive that if you are to go in to inspect and seize, it be in accordance with the general government policy.

Mr. Davis: Thank you for the information. I just find it interesting that in every piece of legislation this new Liberal government has introduced in the past several months, every one, as you look at it now, has a new section which gives search-and-seizure rules which never existed before. I find that an abhorrent situation in the society we live in.

Mr. Chairman: That is all until two o'clock. The presentation that was to have been at 11:30 a.m. has cancelled out.

The committee recessed at 11:17 a.m.

STANDING COMMITTEE ON GENERAL GOVERNMENT

PENSION BENEFITS ACT

TUESDAY, APRIL 14, 1987

Afternoon Sitting



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Polsinelli, C. (Yorkview L) for Mr. Offer

Clerk: Deller, D.

Staff:

Kaye, P., Research Officer, Legislative Research Service

Witnesses:

From the Confederation of Ontario University Staff Associations:

Diacon, B., Treasurer

Trainer, S., Executive Secretary

Harrup, R., Member, Pension Trust Committee, University of Toronto Staff Association

From the Ministry of Financial Institutions:

Kwinter, Hon. M., Minister of Consumer and Commercial Relations and Minister of Financial Institutions (Wilson Heights L)

From the Employees and Pensioners Committee on Inflation Compensation:

Campbell, A., Member

From the United Steelworkers of America:

Gerard, L., Director, District 6

From the Canadian Co-ordinating Committee for Jointly Trusteed Multi-Employer Pension and Benefit Plans:

McCambly, J. A., Chairman

Koskie, R., Legal Counsel; with Koskie and Minsky

Rivers, W., Consultant

Individual Presentation:

Rogers, G. R.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday, April 14, 1987

The committee resumed at 2:06 p.m. in room 228.

PENSION BENEFITS ACT
(continued)

Consideration of Bill 170, An Act to revise the Pension Benefits Act.

Mr. Chairman: I think we will commence for the afternoon. The minister will be along shortly.

The first presentation is from the Confederation of Ontario University Staff Associations: Mr. Diacon, the treasurer; Ms. Trainer; and Ms. Harrup. Please proceed with your presentation to us.

CONFEDERATION OF ONTARIO UNIVERSITY STAFF ASSOCIATIONS

Mr. Diacon: We are quite happy to have this opportunity to make some input into what we think is a progressive amendment to the pension legislation. At the same time, we were dismayed by the comments of the Minister of Financial Institutions (Mr. Kwinter) regarding the advisability of indexing and we hope his comments have not prejudiced these hearings.

The concerns articulated by the members of our confederation have coincided with many of those issues already included in Bill 170. There are four issues, however, which in our view remain not yet or incompletely addressed. I would now like to draw your attention to these items.

These four are the questions of indexing of pensions, ownership of pension surpluses, ownership of pension plans and portability.

The pension surpluses so prevalent today blossomed in the period of high inflation in the 1970s, during which time most pension benefits, being unindexed, lost their buying power. I remember well the editorialists who at this time sought to win the support of pensioners for wage controls on the basis that wages were the cause of the inflation which was eating up their pensions. This argument was pure sophistry, but it carried enough superficial plausibility to deflect pensioners from the real answer to their problem, namely, indexing of pensions.

Now that labour organizations are trying to win protection for pensioners' present and future buying power, we are told that pension funds cannot afford it. This is said in a time of the highest level of surpluses the pension system has ever seen. Such views boggle the mind.

Over the past two years, we have been treated to the degrading spectacle of companies scrambling over themselves to withdraw pension surpluses before the beneficiaries have a chance to make a claim on those funds to ensure the value of their future benefits.

At McMaster University, the university for which I work, we are fortunate to have full indexing of pension benefits up to the level of the consumer price index. Most universities are not so fortunate. Most of us have

either no indexing at all or else indexing of only a portion of the rise in the cost of living.

Most of you would agree that we are unlikely to return to a time of zero inflation, unless it were to coincide with a new Great Depression in the economy. Even recessions these days seem to be accompanied by inflation of at least four per cent, which condemns many pensioners to an inexorable loss of income.

If there are some employers whom the government feels would unfairly escape any immediate cost of mandatory indexing, the proper response would seem to us to not to forget the whole issue but rather to compel those employers to recognize future pension obligations to their employees and to start providing for them now. If there is an industry in which a competitive advantage arises from not having to take future obligations seriously, it is the duty of the government to require such companies to start paying the future costs today, including the future cost of indexing.

The surpluses that have accumulated in the pension plans, in our view, are deferred wages. They are wages which we are not being paid now but which are stored and invested so we can draw on them later. Their purpose should not be to serve as corporate slush funds to provide a ready source of capital investment funds or as a mechanism to avoid paying taxes on some portion of current net income.

If a company makes certain contributions to a plan, these are moneys which are not available to pay in wages. Nothing is more clear than this when it comes to the universities where we are constantly reminded of limited budgets and where we are universally paid at rates eight to 15 per cent lower than comparable jobs in the community.

McMaster University, for instance, has a \$25-million surplus in its pension plan. This quantity arose not only from high rates of return on investments but also because the administration contributed at a rate higher than that needed to cover future claims. The moneys paid into the surplus in this way were not, therefore, available for wages.

The surplus is now being used to promote an early retirement program. This is a purpose to which we do not object since we may all some day benefit from it, but if the pension surplus remaining were some day siphoned off to build a new research complex, I think staff would be hopping mad. There is nothing at present that would prevent such an event from occurring. We therefore seek ownership by the beneficiaries of pension surpluses.

Our third point flows from the preceding two. Pensions are wages which we agree to take later. It is our money. As a group, we should be able to control how it is used. We seek total ownership of pension plans by the beneficiaries. In the university setting, this means ownership and control by several different interest groups, nonacademic salaried staff, hourly rated staff and faculty.

At present, we all sit on pension trust committees, together with representatives from management and businessmen from our boards of governors or regions. These pension trust committees are advisory in nature. While major decisions regarding the funds are not often made in direct contradiction to these committees, the fact is that they do not have decision-making authority. As such, they cannot direct actuaries employed by the universities to give them full information on the pension funds.

A good model to look at may be the pension plan of the Vancouver and District United Steelworkers. This plan has 2,000 members. It has equal representation on its controlling board from the union and from management. The chair rotates each year between each side. This plan allows for portability of pensions between area factories which are part of the plan.

That brings us to our fourth point: portability. We seek full portability of pensions between universities. It is not entirely clear to us that the proposed legislation before us would require vesting of the entire amount of the employer's contributions. At McMaster, for instance, the employer contribution is 200 per cent of the employee contribution. Employees want to know that if they change jobs, the full value of these contributions will go with them.

At present, transfer of pensions between institutions occurs on an ad hoc basis. We would rather have it systematized so that people could count on full portability and thus encourage movement of people between institutions. There is nothing more demoralizing than to watch someone staying in a job that he has outgrown merely to avoid losing the full value of his pension. In our modern-day quest for technological excellence, this is particularly ironic. Each institution will want to hoard its skilled employees, but the better interest of society is served if these people are financially free to move to jobs that will present them with new challenges.

In conclusion, to promote a confident, less cynical and more enthusiastic work force, I suggest that the government institute in the Ontario statute full indexing of pension benefits, member ownership of pension plan surpluses, member ownership of pension plans and full portability.

Sheila Trainer now has an addendum to the paper that I just presented to you.

Ms. Trainer: As my colleagues from McMaster and Toronto will testify, the impact of poor pensions is much greater on the women employed in the university system. As our confederation is heavily weighted with women workers, it is a natural concern for the Confederation of Ontario University Staff Associations.

The facts outlined below are typical of women workers throughout Canada. A person over 65 years of age typically receives an income amounting to 40 per cent of that of the person of working age. Women aged 70 and over receive 59 cents for every dollar received by men of the same age. Most women aged 65 and over are single; nearly 60 per cent of them live below the poverty line established by Statistics Canada. Nearly 60 per cent of single women aged 65 and over are forced to rely on guaranteed income supplements, a form of welfare.

These low income levels are endured for a long time. The life expectancy of the average Canadian woman aged 65 is 17 years. While there is no doubt that the simplest way of improving the lifestyle of older women in this country would be to increase overall the public pension, there must be reforms of private pension plans also.

As the majority of women in the work force do not enjoy any access to private pension plans, it is considered essential that any pension plan should be expanded to include all workers, part-time as well as full-time. As the large majority of part-time workers are women, this would benefit a large proportion of the female work force. While women continue to be paid unequally

whether working full-time or part-time and most pensions are based on earnings, then a median should be struck and the minimum pension in any plan should not fall below what the average salary in the work place would earn.

Pension reform should guarantee all women, in and out of the labour force, indexed incomes above the poverty line, indexed incomes that would maintain their standard of living when a spouse with middle or low income retires or dies, Canada pension plan retirement benefits in their own right and equal treatment with their spouse under the CPP no matter who dies first, minimum pensions tied to the average wage in their work place, and access to pension plans for all workers, part-time or full-time.

In view of the fact that legislation governing equal pay for work of equal value is presently before the Legislature, we would ask that this committee also consider asking that special timetables be undertaken for women nearing retirement so that their retirement income is adequate for their requirements and will not fall below the poverty line.

Mr. McClellan: I thank the confederation for a very fine presentation. I happen to agree with all the points you have put forward. You have put the position forward very clearly and very articulately and I appreciate that.

I was interested in Ms. Trainer's final point having to do with special timetables for women nearing retirement. Could you elaborate on that? I am not quite sure what you are getting at.

Ms. Trainer: While this is not part of your mandate under Bill 170, you are all part of the government and it would be really useful for women nearing retirement to have accelerated equal pay for work of equal value. I am sorry.

Mr. McClellan: I see, yes. The only other comment I want to make has to do with Mr. Diacon's opening statement of concern about whether the minister's positions in the committee have, in neutral language, changed things at all. We have a concern, quite frankly, that they have.

We understood the task force was set up to look at ways and means of bringing about mandatory inflation protection. That is no longer the case. The ministry has said on two separate occasions now that one of the mandates of the task force is to look at the feasibility of inflation protection, so the question is very much an open one. Whether the task force comes in with an indexation implementation mechanism or with a statement that indexation is impossible is now very much an open question. Quite frankly, I think that question has already been answered in the negative.

We are making a very determined attempt on this committee to persuade a majority in this committee and in the assembly to put inflation protection features into the legislation now. If we wait for the task force, we are just as likely to hear the task force echoing once again the views of the chamber of commerce, General Motors, the pension industry and the business community as they state over and over and over again their flat and adamant refusal to contemplate mandatory inflation protection.

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Ms. Harrup: If I might comment on that, it ought to be underlined then that basically the surplus issue is a fictitious issue; that is, there are fluctuations around the mean over time. Surplus that is generated through

loss of benefits to retired persons is valueless in the sense that seeing it as surplus is not the way to see it; it is the loss of benefits over time to pensioners and potentially also loss to current salaries.

It seems to us that the use of a surplus by any others than plan membership should be prohibited and that full provision should be made to protect benefits against inflation, to improve the level of benefits and earnings below the CPP ceiling and to buy back through pre-participation or part-time service.

A moratorium on the use of the surplus ought to be carried into Bill 170. As the value of benefits and, at times, current salaries decline and as the surplus is generated then, employers have no right to that surplus. That is money that ought to go back to be reinvested into the plan for times that inflation fluctuates up or down.

I want to speak briefly to the issue of responsibility for the plan. It is a terrible argument that employers make that they ought to have that plan within their own control. It is a terrible argument that they guarantee benefits through bad times. In fact, employees see us through bad times through layoffs, overwork, increases that are over the consumer price index and declines in actual wages.

Linked to that is the issue, and it is important to underline it, that employees have responsibility for the management of their pension plans. It may be in concert with management, but clearly it is in the interests of employees to have responsibility for those plans and to ensure that moneys, generated through what I think has to be seen falsely as a surplus, go towards benefits.

Mr. McClellan: I thought it was an interesting point and a well-expressed phrase in your brief that moneys paid into surplus are therefore not available in wages. We have heard over and over again the argument from the corporate world that while they have these unfunded liabilities and these deficits they have to make up, they somehow have a right to the property of some other group of people in order to do so. They do not point out the self-evident truth that when they pay money against deficits, that money comes out of wages and is no longer available for wages. Money in surplus is also money that is not available for wages. It always comes back to money that is not available for wages except on a deferred basis.

I do not know how you get around that. I really do not know how you get around the fact that we are dealing with property in the form of deferred or lost wages or money that was otherwise taken out of wages or otherwise not available for wages, which remains the property of those on whose behalf it is paid, the employees. For the life of me, I do not understand how there can be any confusion about that. We continue to have the discussion around this central point, and I guess we will continue to have it, but it seems to me the truth in this matter is as clear as sunlight.

Hon. Mr. Kwinter: I would like to correct the impression that my New Democratic friend keeps putting forward on the basis that the more he says it, the more people will believe it.

Mr. McClellan: You are the one who keeps saying it, though.

Hon. Mr. Kwinter: Let me clear it once and for all for the record.

Mr. McClellan: You can try again.

Hon. Mr. Kwinter: You have taken this position, and that is fine. The commission that is looking into the implementation of mandatory inflation protection has a mandate that has not been changed. It knows exactly what it is doing. Its mandate is clear, it has not been changed, and we are waiting for its report.

If anybody has undermined that commission, it is that member. If anybody has done it, it is that member, because what he has said is that what the commission is doing is irrelevant. It is interesting; this member is the great sort of champion of private pension funds. I want to quote from a debate that took place in the House. This is Mr. McClellan: "The private pension system is a dead skunk. It has two characteristics of a dead skunk: it is dead and it stinks. There is nothing one can do by way of artificial respiration to change that reality." This is the man who is championing private pension plans. He does not believe in them.

We put in a commission to address the concerns. It has a representative of labour on it, it has a representative of management, of plan sponsors, and it has an independent professor from the University of Toronto who is looking at this issue.

All we are saying is it makes no sense to go ahead until they report. By his comments, implying that I have undercut them, he has undercut them. He has decided that the evidence being presented may not be to his favour and that they have already made up their minds. He just said, "They have made up their minds, and they are going to come in favour of these," what he considers to be "business interests."

Mr. McClellan: I am sorry to have inflicted this on you.

Hon. Mr. Kwinter: I am saying, let them report and let them tell us what they recommend. Their mandate has not been changed one iota, they have exactly the mandate they accepted, and when they report their report will be accepted. That is where we are.

Mr. Diacon: If you will excuse me, Mr. Kwinter, the reason Ross McClellan made that comment had something to do with my opening comments, which were made before you came into the room. That was with reference to my concern as to whether your comments in the media had brought this whole process--

Hon. Mr. Kwinter: That is why I commented. I wanted to clarify that for you.

Mr. Diacon: I am just trying to clarify for you what I said when you were not here. I commented that I was distressed that your comments may have prejudiced this whole process and that I was wondering out loud whether there was really any point in our being here. None the less, I thought it was important for us to be here and to present our brief, in which we think there should be full indexing.

Hon. Mr. Kwinter: Can I just address that?

Mr. Diacon: Yes, sure.

Hon. Mr. Kwinter: At present, the bill we are considering is Bill 170. There is no provision for mandatory inflation protection in the bill.

Mr. Daicon: That is right; but there should be.

Hon. Mr. Kwinter: Just one second. What is happening is that we have already stated our position. Our position is that we are opposed to putting mandatory inflation protection into Bill 170 and we have proposed that this commission report to us on that issue. We have not changed; that is our position. Nothing that I have said changed my position.

What has happened is that the New Democratic Party has declared it wants to amend this bill. They want to include mandatory inflation protection before the commission reports. They have every right to do that, and they have every right to make that statement.

In all the comments I made, they were made in the context--I repeated it six different times and I repeated it the day Mr. McClellan claims I did not--that I am in favour of mandatory inflation protection. All the arguments I was making, which I say were taken out of context, were that it should not be included in this bill. I still say it should not be included in this bill and I say it very strongly.

I have not prejudiced anything, because I have not changed my position. I have maintained from day one that it should not be in this bill and I have stated why it should not be, although I have said we are committed to mandatory inflation protection. All of the argument is valid, because you have come and you will try to convince the committee members that it should be included and there will be members of other parts of the community who will come forward and say it should not be.

I have not prejudiced anything, because nothing has changed. My position is exactly as it was when I announced in the House we were bringing forward Bill 170; we are not including mandatory inflation protection; we have set up a commission to look at the issue; and not only do we prefer it, but it is our position that we will not deal with it until that commission reports.

That is all I have said. To put any other cast on it is being done for purely political reasons and has no bearing on the facts. That member had what I consider the effrontery to say, when he saw the transcript, that we had it edited. The transcript showed I was right and he had the effrontery to suggest the transcript had been edited because it showed that on four separate occasions in that presentation I was committed to mandatory inflation protection. That is where we are. This is an issue in his mind and in his mind only. This is a man who is not committed to private pension plans, who thinks they are skunks and should be abolished.

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Mr. McClellan: Sounds like I should be shot.

Mr. Grande: The louder you scream, the better the people will listen to you.

Mr. Chairman: Do you have another question, Mr. McClellan?

Mr. McClellan: I just want to say that has changed since Wednesday, April 8. The minister said one of the things the task force may report on is, "We have looked at it and it makes no sense and you should abandon your policy even though you are in favour of it." That is the new information that is on the table and on the public agenda now, which the minister is so regretful

that he blurted out, because it turns the task force from an implementation study group into a feasibility study group.

As I said before, the question is now very much an open one as to whether we will ever see inflation protection and whether the task force will recommend anything in opposition to the very loud voice of the business community. My best guess is the answer is that the task force will not dare cross the kind of powerful interests that have spoken out in such unanimity on this subject. They will report against inflation protection. If we are going to see it, it will have to go into the bill now while the bill is before us going through this committee and committee of the whole House. I am absolutely convinced of that. I appreciate very much the contribution the Confederation of Ontario University Staff Associations has made to the discussion this afternoon.

Hon. Mr. Kwinter: You have not responded to my remarks about your comments about private pension plans.

Mr. McClellan: You have quoted the beginning of a speech that summarized the findings of the Royal Commission on the Status of Pensions in Ontario. I do not have my copy of the royal commission on pensions here, but I believe the first sentence is, "Ontario does not have a system of private pension income," and it goes on to give the most damning indictment of the private sector pension system that it is possible to write.

I made that speech in the context of the debate on matters that flowed out of the royal commission on pensions and the report of the select committee on pensions. In the absence of reform legislation, those statements are as true now as they were when I mentioned them.

Hon. Mr. Kwinter: Your speech also said that no matter what happens, it is not going to help.

Mr. McClellan: You seem to be validating my prediction in everything you say and do. If you cannot reform the private pension system, which provides no inflation protection, which does not cover the majority of people, which does not have decent or sensible vesting provisions, and these problems continue to be in existence--

Ms. Trainer: Excuse me. We would just like to say we will withdraw and allow you to continue this debate in peace and quiet. At the moment, I feel like a very tired bone that two dogs are scrapping over, so we will withdraw and let you argue it out between yourselves. I did not realize this was the way a committee hearing was conducted, but maybe I am wrong.

Mr. McClellan: I apologize.

Ms. Trainer: That is okay.

Mr. McClellan: I have indicated before that I regret very much this was inflicted on you.

Ms. Trainer: No problem. We did not realize it was quite so inflammatory, but we did have to express our dismay.

Mr. Chairman: Thank you very much for your presentation.

The next presentation is from A. J. Campbell of the Employees and Pensioners Committee on Inflation Compensation.

EMPLOYEES AND PENSIONERS COMMITTEE ON INFLATION COMPENSATION

Mr. Campbell: Ladies and gentlemen, I appreciate the chance to talk with you today. I will be reading from the paper called, Presentation on Bill 170. You have two briefs in front of you now, one called a submission and the other one called a presentation.

My name is Art Campbell. I am a retired wing commander from the Royal Canadian Air Force. I served in the Second World War as a pilot. After the war, I studied aeronautical engineering, obtaining a bachelor's degree in 1950 and a master's degree in 1956. I continued flying and practising aeronautical engineering in the Canadian Armed Forces until 1976. Since then I have been involved in a number of activities, including, increasingly, participation in the pension reform process.

I made presentations to the select committee on pensions--Mr. McClellan was there--six years ago, the federal task force on pension reform and Commons and Senate committees dealing with public service and armed forces pensions. In 1984, I appeared before the transport committee of the House of Commons in support of Earl White of the Canadian Railways Employees' Pension Association. As a result, the CN pension system was investigated.

My work is advising pensioners and employees, both singly and in groups, and some employers on methods of effectively compensating pensions for inflation. Inflation compensation means that there are no winners and no losers caused by inflation between and among the three participants in a pension fund; namely, the employer, employees and retirees. To accomplish this end, I have extended the work of Professor James Pesando of the University of Toronto, using the tools of the actuary.

Quite simply, retirees should get the pension they paid for and employers should pay the cost they expected to pay.

Normally, in my presentations I have concentrated on inflation compensation or inflation protection because that is the important thing, as you have all heard this week. However, there are some features of this bill that just have to be talked to besides the inflation protection.

This brief will show that Bill 170 is terribly biased against the interests of retirees. The bill is not only biased; it is also misleading. It includes a profound conflict of interest. These faults may be due to "blissful ignorance and undoubted negligence." Those are the words of the Supreme Court of Ontario in commenting on the Pension Commission of Ontario, the drafter of Bill 170.

Further, the pension industry representatives who have appeared before you have given you, to say the least, very misleading evidence. The evidence which I will present--hard evidence, not just words--from the industry's own sources, completely contradicts the misinformation disseminated by the industry over the past 11 years. In particular, I will show that the cost of indexing is completely irrelevant.

Bias in Bill 170: Under the definitions of "member" and "former member," a retiree is not a member of the pension plan. Thus, even though he has considerable assets and much to lose, he cannot participate in an advisory committee set up under section 25 and is restricted in membership on a board of trustees under section 8. Rather than going through all the sections, I will just suggest that, clearly, retirees should be members of the plan. We

must ask, why are retirees excluded? If they do not serve on boards and committees, they cannot protect their assets.

Under section 46, the administrator is discharged from responsibility if he pays a pension in accordance with information provided by the retiring employee. An unscrupulous administrator thus need not pay the pension that was earned. Why was this section included in the act?

Conflict of Interest: In several sections of the act, action is to be taken "in a prescribed manner," meaning in accordance with regulations prepared and administered by the Pension Commission of Ontario.

The Supreme Court of Ontario has, to all intents and purposes, recognized the commission as a tool to protect the pensions industry, not the interests of plan members. Thus the role of the commission should be very limited and prescribed. It should not have authority, such as is given through the definition of "commuted value," for example, to effectively determine the cost and the value of pensions. The commission proposes to go further. Through regulation, this authority has been passed to the Canadian Institute of Actuaries.

Actuaries almost invariably work for employers or employers are their clients. Thus they are hardly unbiased. The institute is in a clear conflict-of-interest situation. Further, there is no need for commission or institute involvement. Involving these bodies is clearly biasing the system against retirees.

Misleading Information: Explanatory note 10: "Employers' contributions must provide at least 50 per cent of a pension earned after December 31, 1986, (section 40)." Section 40 does not even mention employers' contributions. It does not provide that employers contribute 50 per cent of the cost of pensions. Further, section 40 is built on a quaint notion, advocated by some members of the pension industry, including the Pension Commission of Ontario, that the cost of a pension plan is not part of the total pay package of employees.

As shown in the attachment to the main submission, section 40 provides an employer with a means for very large gains at the expense of retirees. Is that why it was included in Bill 170? To create a smokescreen? Or is it just a product of ignorance and negligence? Clearly, it is a very useful device for unscrupulous employers. It is just another stumbling block to employers who wish to be fair.

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One additional comment will close this section. To my knowledge, four employers have been taken to court by members of pension plans concerned about removal of surpluses. In every case, the courts have overturned a decision of the Pension Commission of Ontario. Twice the court had scathing comment of the commission. How many more decisions of the commission would have been overturned if they had been taken to court?

Clearly, the commission, in drafting Bill 170 has not corrected the biases noted by the courts. What is not included in Bill 170, inflation protection, is even more indicative of the biases of the commission.

Much that I have to say from here on is going to be in direct contradiction to probably what you believe is happening and in direct

contradiction to what you have heard from many witnesses. Please bear with me and make me prove my case if you do not believe what I have to say.

Some members of the pension industry have criticized the federal public service pension system because it is "fully indexed" with attendant "unlimited costs." Thus it should be instructive to examine those "costs."

It is a defined benefit plan with pensions based on the average salary usually over the best, usually the last six, years. With inflation at zero, the cost as a percentage of salary is 18.1 per cent. At nine per cent inflation, that drops to 13.9 per cent. The data were obtained from the chief actuary of the government of Canada, along with his assumptions. The correspondence can be made available to the committee.

The data are interpreted as follows. The chief actuary assumed that inflation, long range, would average 3.5 per cent. Thus 16.2 per cent of salary should be deposited in an account earning interest at the rate assumed by the chief actuary.

If inflation averages more than 3.5 per cent during the salary averaging period and the first year of retirement, then more than enough would have been collected to pay for pensions. Conversely, if inflation averaged less than 3.5 per cent, not enough would have been collected. These are costs long term. There are short-term implications.

These implications can be appreciated by examining data extracted from Ontario Proposals for Pension Reform and from a report prepared by William M. Mercer for the federal government. The data are for a "fully indexed" defined benefit plan like the federal plan above, except that the pension is based on the average salary over five years.

With inflation at zero, this plan is set up for a cost of 10 per cent. The Mercer data show that at nine per cent inflation, the increase is to 11.7 per cent. No significance should be attached to the fact that one plan cost 18.1 per cent and the other 10 per cent. At zero inflation, the benefits in the latter plan would be about half the benefits of the former plan.

Note that, contrary to the chief actuary's data, the cost is higher at the higher rate of inflation. The difference is due to the investment earnings rates assumed by the two actuaries. With inflation at zero, the chief actuary assumed three per cent and so did Mercer. At nine per cent, the chief actuary assumed 12 per cent earnings--that is a three per cent spread--whereas Mercer dropped the spread to 1.5 per cent and assumed 10.5 per cent earnings. Mercer reduced the spread between inflation and earnings rate at nine per cent inflation. This is a short-term effect and probably is Mercer's way of factoring in the lag in real investment return as inflation rates rise.

In any event, the increase in real rate, as inflation decreases, must also be considered and that is the phase we are going through right now. There are very large, real returns in pension funds. That has to be taken into account because actuaries work on long-term data or they are supposed to work on long-term data.

When the accepted long-range rate, three per cent above inflation in this case, is factored in, then the cost of high inflation rates is lower than at low inflation rates. The bracketed numbers are my estimates done by computer simulation. That is, at inflation of nine per cent, the Mercer plan shows 7.9 per cent when it is calculated correctly, where Mercer published data and they were picked up in the Ontario proposals showing 11.7 per cent.

The Mercer data are terribly misleading. They completely distort the truth. Contrary to what you have been told, costs are not unlimited at high inflation rates; they are reduced.

The cost of an unindexed pension. You have been told that employers faced high pension costs in the early 1970s and that they bear the risk associated with a defined benefit plan, thus they should receive any surplus which develops.

The cost of unindexed pensions for those same plans are available from the same sources.

With inflation of zero, of course, the unindexed pension is the same as the indexed; 18.1 per cent and 10 per cent. At nine per cent inflation, the federal plan drops down to 6.4 per cent unindexed. The Mercer plan drops down to five per cent.

Note that the cost of the Mercer plan at nine per cent inflation is half the cost at zero inflation. This large reduction in cost is despite the very poor real return on investment assumed by the actuary. Low term, the cost of nine per cent inflation will be about 3.4 per cent. Some risk. Short term, they get a cut in half of their costs; long term a cut of one third at one per cent inflation.

Surpluses: With a reduction in costs, the fund will have an experience gain. That means a surplus unless there have been contribution holidays or increased benefits for current employees or retirees, etc.

Please note that the reduction in cost for both indexed and unindexed pensions and consequent experience gain was due to inflation being higher than assumed. That same inflation reduced the purchasing power of pensions that were paid during that period of high inflation. The experience gain is directly related to the loss to pensioners.

What are those losses to pensioners? The purchasing power of a pension is directly related to its long-term cost to the pension plan. The following is a comparison of purchasing power at nine per cent inflation compared to 3.5 per cent inflation. Indexed, there is a drop of 14 per cent; unindexed, a drop of 54 per cent.

We have been told that many employers provide ad hoc increases. However, few, if any examples have been provided. My experience is that increases are nil or they are token increases.

General Motors yesterday talked about the increases it had made. I notice the Globe and Mail put it down as an 83 per cent increase from 1973 to 1983. What was not mentioned was that the consumer price index went up 146 per cent during that period. An 83 per cent rise in pensions; 146 per cent rise in CPI. Perhaps that is why I am here today, to try and set the record straight.

Attached to the submission is one example of a Canadian National pension. CN management, like Ultramar management--and I have talked with them--and most other employers say that they have treated their retirees well. Yet in 1985, about 39 per cent of the pension the average 1970 retiree could reasonably have expected to receive and that CN could reasonably have expected to pay remained in the fund, available to CN. That is 39 per cent in one year. The pension had half the purchasing power it had in 1970 and that is with ad hoc increases.

Examples from CN, CP, the armed forces, the public service, the city of Ottawa and Inco can be provided if that would be useful to you.

Fortunately, it is not necessary to know how the experience gain has been dispersed in order to reach an equitable solution. Pensions should be adjusted so that the cost of each pension is the percentage of salary estimated during the years of employment as the cost of each pension. In that way, current retirees would get the pension they paid for and the pension fund would pay the cost the administrator expected to pay.

The methodology was provided to the Pension Commission of Ontario a year ago. There has been no response. More stonewalling, as the Supreme Court of Ontario noted.

Clearly, you do not have to concern yourselves about where the money is coming from to meet this commitment. If the plan administrator has been indexing, the plan will face little or no change in cost. That, I think, addresses the point where many people said that good plans would suffer if you mandated inflation protection. They would not. They do not have to. They have already done their thing.

If pensions have been unindexed, then the administrator has had access to large gains indeed. Further, only a portion of those gains would be needed since many people who should have received a compensated pension are now dead. However, it is suggested that the means of meeting that commitment of paying the pension that was paid for be left in the hands of pension plan administrators. As you will see from these figures, they are very capable people.

The cost of indexing--a smokescreen: Compare the following approximate costs for the federal public service pension plan which is representative qualitatively of defined benefit pension plans.

The estimated cost of an unindexed pension at one per cent inflation, and that is the actuarial assumptions or implicit assumptions of the 1950s and 1960s, was 15.9 per cent of salary. The actual cost of an unindexed pension, at 6.7 per cent inflation, and that is the average rate of inflation from 1965 to 1984, was only 7.9 per cent of salary. An unindexed pension cost half; pension purchasing power cut in half.

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The actual cost of an indexed pension at 6.7 per cent inflation is 14.6 per cent of salary, so an indexed pension costs less than an unindexed pension. This shows that members of unindexed pension plans in the 1950s and 1960s paid more than enough to pay for a fully indexed pension at the average rate of inflation of the last 20 years. This shows they received less than half the purchasing power they paid for, or their former employer expected to pay. This shows that their former employer received a windfall gain equal to half the estimated cost of their pension. It also shows that the cost of indexing is completely irrelevant. It is the cost of the pension that is relevant.

When you mandate inflation protection, and I am certain you are going to do that, employers can keep their costs unchanged. The pension can be an indexed pension costing exactly the same as their current unindexed pension. All you are doing is making an honest man of them. The methodology is relatively simple. As I said earlier, it was provided to the Pension Commission of Ontario a year ago.

In conclusion, it is abundantly clear that Bill 170 is terribly biased for the benefit of unscrupulous--not all--employers and against the interests of retirees. Bill 170 excludes retirees from membership. Bill 170 discharges employers from responsibility to pay the pension that is specified in the plan. Explanatory note 10 is not only irrelevant, it is wrong. It tends to cover up the transfer of assets from retirees to employers. Bill 170 places the cost and value of pensions in the hands of regulators who have been found wanting and in the hands of the Canadian Institute of Actuaries, with a clear conflict of interest. Finally, Bill 170 does not include inflation protection.

There has been an attempt by the Pension Commission of Ontario and some other members of the pension industry to misinform you. I understand that two members of the commission are, or were, Mercer employees. One of them was a former senior official with the commission. Perhaps that is where our problem lies.

We are recommending that explanatory note 10 be deleted, "Employers' contributions," and that sections 40 through 55, "Benefits" sections be rewritten to exclude the bias and that all references to "employee's contribution" and "commuted value" be deleted.

Benefits must be stated in real terms using the consumer price index. If I can stop there just for a second, gentlemen, and the minister in particular, the Task Force on Inflation Protection for Employment Benefit Plans is bound to come up as a subject.

In the simplest terms, every actuary will agree that there is a real return on investment. It has been suggested by the Canadian Institute of Actuaries that is somewhere between two and a half and three and a half per cent. But the main thing is there is a real return above the rate of inflation. If there is a real return, you can pay a real pension.

You do not have to do anything else except specify that the pension is to be stated in real terms. The actuaries have data going back to the year 1 on what the returns on various funds are. They have the same in real terms as they have in nominal terms. They could say: "We expect, or we have produced 3.5 per cent real return on this. We will estimate that in future we will take 3 per cent"--conservative funding or margin for profit, whatever you want to call it. The thing is that if you have a real return, you can specify a real pension. You do not really need any fancy formula.

Next, deferred pensions and pensions now being paid must be adjusted so that the cost of each pension is the percentage of salary estimated during the years of employment as the cost of that pension. That is to catch up for the people who are now out and retired, so that they do not continue to suffer while their employers rake off so-called surpluses, contribution holidays, increased benefits for employees, etc.

The others are sort of administrative items that I have mentioned in here. I think there could be serious consideration given to scrapping Bill 170 and starting over again. I will be happy to answer your questions.

Mr. Chairman: Are there any questions?

Mr. McClellan: I thought somebody else might have a question for a change. I am sure you are familiar with the study that was done in 1984 by the then Treasurer, the member for St. Andrew-St. Patrick (Mr. Grossman).

Mr. Campbell: Ontario Proposals for Pension Reform.

Mr. McClellan: Yes, and the study--it is appendix C in the index--that studies the impact of inflation and inflation protection on pension costs.

Mr. Campbell: That is the graph I was quoting from that shows 11.7 per cent at nine per cent inflation.

Mr. McClellan: Right. I may not have followed you completely. As I understand it, you are arguing that even table 10 in the appendix overstates the cost impact of inflation. Table 10 indicates that there are no cost impacts between zero and six per cent inflation.

Mr. Campbell: In the long term, the cost of an indexed pension drops with inflation.

Mr. McClellan: This table that was done for the Treasurer, which was the basis of his proposal for 60 per cent mandatory, shows that pension cost impacts are zero between rates of inflation of zero and six per cent. After that, the line starts to creep up slowly and then when it hits about 10 or 11 per cent, the cost impacts start to become significant in terms of per cent of payroll. You are arguing that even above six per cent in fact the opposite is true.

Mr. Campbell: If you look at the table of assumptions there, he starts with a spread between the investment return and inflation of three per cent at zero inflation. At six per cent, it has dropped down to something like a two per cent spread. and at 12 per cent, it drops down to a half per cent spread. Those are short-term effects. Long-term, it is three per cent or 2.75 per cent if that is the plan he is working on. Whatever it is, it is constant in the long term, so the indexed line should be below.

Mr. McClellan: You do not even agree that it would be a flat line between zero and 6 per cent.

Mr. Campbell: It is not. The chief actuary of the government of Canada agrees that the cost of an unindexed pension drops. The public service plan drops from 18 per cent of salary at zero per cent to 15.9 per cent at nine per cent. That is the averaging process, another little trick that is thrown in.

Mr. Lane: Are you really serious when you indicate that Bill 170 is probably flawed beyond redemption, that it should be scrapped and that we should start over again? Is that really a serious comment?

Mr. Campbell: I have looked only at those parts I have commented on here. I have glanced at the other sections, so I do not really know how good they are, but if they are anything like this section of the act and the sections I have looked at, I think it is beyond redemption and we have to go back.

What I think would make an awful lot of sense would be to pass a piece of legislation that says pensions must be stated in real terms. Worry about all the administrative stuff in Bill 170 later on. There is the nub of this whole argument. If we need so-called inflation protection, all you have to do is state the pension in real terms; that is, what is currently called a fully indexed pension. You can set that up as a business proposition. That is one

thing that has not come out completely here: A pension plan is a very big profit-maker for a company.

One thing I could agree with in the Globe and Mail is that, "Profits Would Have Been Lost With Pension Plan, GM Says." We have had a lot of contact with the CN pension plan. In the last five years, CN has had a profit in two of those years. I do not think it had profits before. In two of those last five years, they contributed nothing to their pension fund. There is a direct correlation.

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Pension funds are a moneymaker. As mentioned in here, the average unindexed pension paid in the last 20 years cost half of what it would have cost if inflation had stayed normal. It means that for every dollar that was paid out in pensions, a dollar stayed in the pension fund. Sophisticated employers have used that money to increase benefits for current employees. The employees think that they are getting a good deal and that they are getting something for nothing, but they should know darned well that the employer takes that into account when he goes to the bargaining table. So you have a huge profit centre operating right now in the pension plan.

Mr. Lupusella: At page 9 of your presentation it says in recommendation 2(b) that "benefits must be stated in real terms, using the consumer price index." You also mentioned in the course of your presentation that benefits must be fully indexed. Are we talking about the same thing today--the kind of denominator that is the consumer price index--or do you mean something else?

Mr. Campbell: Essentially, the same thing. In most defined benefit pension plans the pension is calculated based on the average salary over a number of years. If inflation is high during that period, then the cost of the pension is reduced. That is the reason the cost of a fully indexed pension decreases as inflation goes up. What I am saying is a real pension--you take the CPI during the period that you are averaging salaries, during the last six years. Right now, all it has done is take the salary and you average it over six years. For a real pension, the consumer price index in those six years is taken into account in calculating what pension a person is going to get.

Mr. Lupusella: I do not have any objection whatever to the principle of the consumer price index that you are suggesting. You are talking about two different things. One concerns the value of the pension. Because of the inflation that has taken place through the years, the pension becomes smaller in relation to value. You also mentioned the consumer price index. I really do not understand it. You are incorporating two things in one.

Mr. Campbell: The consumer price index is a measure of how much the pension decreased in value.

Mr. Lupusella: Okay, that is what I wanted to know.

Mr. Chairman: Thank you very much.

The next presentation is from the United Steelworkers of America. We have several gentlemen: Mr. McKenzie, Mr. Gerard, Mr. Hynd, Mr. Beattie and Mr. Delaney, and we have five seats. Maybe you would identify the members with you, please.

UNITED STEELWORKERS OF AMERICA

Mr. Gerard: Let me start off by introducing myself and my union. My name is Leo Gerard. I am the director of the United Steelworkers of America, District 6, which is the province of Ontario. Our union in Ontario represents some 80,000 workers in various industries ranging from gold mines in Red Lake to nursing homes in Hawkesbury.

The people I have with me are Ken Delaney, who is a pension researcher from our national office. The vacant seat is for our research director who has gone to make a phone call. We are bargaining with Stelco and things always keep percolating. That is Hugh McKenzie, our research director. On my immediate right is George Beattie. George is the chairman of the pension and group insurance committee at the Stelco bargaining. Next to him is Harry Hynd, the district representative and a vice-president to the Ontario Federation of Labour.

Let me say at the outset that I think we have provided the committee with a fairly large brief, some 45 pages. It is certainly not my intention to go through that, but to make some summary comments that are in the area of the brief and in closing to make some additional comments that are as a result of some confusion that seems to have come to the front in the last several days.

I want to first thank the committee for providing us with an opportunity to make our views known on what we think is an extremely important topic to everyone in this province. As I said earlier, we have prepared an extensive brief. It is not my intention to run through that extensive brief at this time, but we intend to touch on what we think are some of the highlights of that brief.

I want to say at the outset that I understand from some media reports both last week and again yesterday and today that the Minister of Consumer and Commercial Relations (Mr. Kwinter) seems to have raised considerable doubt as to the government's commitment to mandatory inflation protection in this province. I want to admit to you that I was astounded at his initial remarks.

I was one of the trade unionists, along with others, who were concerned about the deferral of the surplus assets and inflation protection issues to the Friedland task force. I want to say that our concern is a simple one. Task forces and commissions are time-honoured ways in Canada for avoiding political issues. The task force looked like a sure-fire way for the government to postpone dealing with a key issue until after a provincial election when it might then, if it won a majority, be easier to forget the idea of inflation protection entirely.

I was told at the time, through one of the members of the task force, that no less of a person than the Premier (Mr. Peterson) assured him that this was a matter that this government would deal with and that the government was committed to inflation protection and that commitment was real and it would go ahead.

I am here today and I would like to hear for myself from the minister exactly what the ground rules are for inflation protection from his point of view, as he represents the government on this issue, and if the government position really is to support inflation protection, I would like to know what the objection is to putting the principle in Bill 170. As far as I am concerned, I and my union are going to consider the government's commitment to be in doubt unless and until it agrees to provide for the principle of

inflation protection in this legislation and let the Friedland commission decide what form that will take, but this government must commit itself in legislation to the principle of inflation protection.

Last week's presentations to the committee were very interesting, not only for the minister's admission of his own lack of commitment to inflation protection, but quite frankly we found the hysteria of the business community response to the idea of inflation protection very interesting and very revealing. The argument that I found most interesting was that tougher standards would destroy the pension system because employers would stop offering pensions rather than improve them to meet the higher standards. In a related vein, business presentations and their apologists in the cabinet argue that it was inequitable to improve private pension standards because people who do not have a pension at all would not benefit in any way.

In the first place, I take these statements to be about as close to an admission by the pension industry that it is a total failure in providing for adequate retirement incomes as we are ever going to see them admit. The fact that fewer than half of the workers in this province belong to a pension plan and that only a fraction of them ever collect a pension raises serious questions about the role that the private pension industry plays in our retirement income policy, and the statement that the system would collapse if inflation protection were mandated by law, with all due respect, amounts to an admission that the private sector is not capable of providing adequate pensions for even the minority who belong to the private pension plans. No one, not even the business community is arguing that inflation protection is not a legitimate and desirable goal. They are simply stating that the present system cannot be expected to achieve this goal.

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This is not the only basis for scepticism about the private pension system. Twenty years after the introduction of the Ontario Pension Benefits Act, private plans cover only 47 per cent of Ontario workers and only 36.6 per cent of women workers are covered by a private pension plan. Limited vesting rules mean that only a fraction of those covered ever qualify for a pension of any kind.

The inadequacies have not gone unnoticed. The pension system has been under virtually continuous review for more than a decade. Studies too numerous to list have identified the same fundamental problems over and over again.

In our view, the present round of pension law reform amounts to a last chance for the private pension system in Canada. For over 20 years we have relied on a privately initiated system for the achievement of an important social goal, the provision of adequate retirement incomes for Canadian working people, and it has failed us dismally.

As a consequence, the task of this revision of pension law must be to set a standard of adequacy which the private pension system must meet. It will then be up to the system itself to demonstrate if it can meet that standard. If employers cannot provide pension plans which meet standards of adequacy, it is best that we know now, so that we can begin now to devise a public pension system that meets those standards.

We want to talk about some major substantive issues and recommendations. First, surplus assets and inflation protection. A great deal has been said about the issue of excess pension earnings and assets. I want to limit my

comments here to a couple of fundamental issues that I think might help me to understand why we feel so strongly about this issue.

First, it is important to recognize that the issues of inflation protection and excess earnings are opposite sides of the same coin. Inflation reduces the purchasing power of pensioners. At the same time it pushes interest rates up. Increasing interest rates result directly in pension plan earnings which exceed estimates, and excess pension plan earnings eventually result in surplus assets.

In principle, it should not matter how pension plans are funded, even though defined benefits are negotiated. It is the benefit, and not the employer's contribution to the fund, that is negotiated.

In practice, however, that is not the way it works. In practice, employers and employees negotiate economic packages that include the cost of providing improvements in pensions, something we were involved in just today. Every cent that employees spend on improved pensions is a cent not available to provide for increased wages.

In effect, employees make a choice either to take additional wages now or to defer wages by investing in pension improvements.

If higher than expected pension earnings on the pension fund mean that more than was necessary was contributed to the fund, the excess represented by those earnings is deferred income which is not required to fund the agreed upon pension benefits. Both pension plan members and retirees thus subsidize the employer plan sponsor.

The excess earnings are surplus assets and employers are now benefiting directly from the deferred wages of every pensioner whose retirement income is being undermined by inflation.

Who does the money belong to? We think the answer is obvious. It belongs to the plan members whose deferred earnings it represents.

This committee is undoubtedly being urged by the government to consider the surplus question settled by the establishment of a moratorium on surplus removal and the establishment of the Friedland task force.

Unfortunately, despite the moratorium and the creation of the task force, employers are continuing to look for ways to appropriate pension funds. Because the moratorium does not address the withdrawal of surplus funds from terminating pension plans, we are seeing more and more attempts to terminate plans and remove excess assets. Another strategy followed by employers who cannot terminate plans is to use excess earnings to reduce or eliminate their contributions to the fund.

We recommend that the moratorium be broadened immediately in two ways. First, until the surplus question is finally resolved, it should be mandatory that surplus funds in terminating pension plans be used to increase the benefits paid to plan members and not revert to the employers. Second, there should be a moratorium on the use of excess pension plan earnings to reduce employer contributions to pension funds, as required by actuarial cost certificates.

Inflation protection: The basic approach to pension plan design and regulation in Ontario was established in the 1960s when inflation rates were

low and retirees could expect relatively little erosion of the value of their benefits as their retirement continued. Pension plans were valued at interest rates in the three per cent to four per cent range, reflecting an expectation that long-term inflation would be one per cent or less.

The reality today is dramatically different. A pensioner who retired in 1970 has seen the real value of his or her pension cut by two thirds by 1986. Even at more moderate rates of inflation of between four and four and one half per cent prevailing today, retirees can expect to see the buying power of their pensions cut in half by the time they reach their average life expectancy. Inflation has become a fact of life. As a society, we have learned to live with it; so have pension plan sponsors.

The calculations used by actuaries in valuing pension benefits now build in an assumption that long-term inflation will be in the four per cent to five per cent range. The pension plans have not changed in response. In 1980, 98.3 per cent of private pension plans registered in Ontario, covering 95.1 per cent of all plan members, had absolutely no formal provisions for inflation protection.

The failure of the pension industry and plan sponsors to respond to the reality of inflation is unacceptable. It is unacceptable to our union; it should be unacceptable to this committee. The seriousness of the problem has been obvious for more than 20 years. This failure and the industry's response to pension law reform in general and to proposals for mandatory inflation protection in particular, reveal a very disturbing fact about the pension plan system.

As a group, the business community in this country appears to value private pension plans as an immense source of investment capital and nothing else. It is hard to avoid the feeling that nothing would make them happier than if pension plans never paid out a nickel in benefits.

The confusion about the publicly expressed views of the Minister of Consumer and Commercial Relations (Mr. Kwinter) has totally undermined the confidence we have or had in the Friedland task force process. We are therefore urging this committee to incorporate a strong commitment to mandatory full inflation indexing in the legislation. If such a commitment is entrenched in the bill, the Friedland task force can focus on the many technical details to be resolved without fear that political apologists of the chamber of commerce will cut the ground out from under them. The time for debate on the basic principle is long past.

We recommend that Bill 170 be amended to require that all pension plans provide for annual 100 per cent indexing of all benefits to the cost of living as reported by Statistics Canada and the consumer price index. Mandatory indexing would apply to all pension benefits including deferred vested benefits, pensions currently in pay and retirement benefits granted after January 1, 1987, the effective date of the Pension Benefits Act reforms.

To enable the Friedland task force to complete its work on the implementation of inflation protection, the effective date for the amendment to Bill 170 requiring inflation protection should be January 1, 1988. We consider it to be particularly important to require indexing of deferred vested benefits as well as the retirement pensions. Without indexing of deferred vested benefits, the concept of pension portability loses a great deal of its appeal, particularly to the younger workers.

The usual argument against mandatory inflation protection is high cost. The historical reaction by some plan sponsors widely quoted in the media and before this committee by the minister last week, does not address the fact that inflation-generated excess earnings would already be enough to fund at least partial inflation protection if the funds were not being siphoned off to cover costs in other areas.

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In addition to ignoring inflation-generated internal funds, the huge cost figures being bandied about are undoubtedly based on assumptions chosen to overstate the cost and to intimidate this committee. I understand the interests of the business community in keeping its cash cow intact, but quite frankly, I see no reason this committee should pay any attention to its self-serving complaints.

Pension administration and control: When pensions were first introduced by employers, they were treated as if they were nothing more than gifts to the long and loyal service employees, a kind of gold watch with a lifetime guarantee. In those days, benefits were typically not funded in advance. They were paid for on a pay-as-you-go basis, and it was not uncommon for retirees' pensions to be cut off when employers changed their minds, went bankrupt, changed ownership or otherwise fell on hard economic times.

Our collective thinking about pensions has changed a great deal since those early days. The whole structure of pension regulation developed in the 1960s is based on the premise that retirement pensions earned through employment are an entitlement that must be protected by law. The way society thinks about pensions is still changing. Today the public supports strongly the idea that pension plan members ought to have equal say in the administration and control of pension plans and pension funds. Unfortunately, Bill 170 lags far behind public opinion.

The powerless advisory committee structure mandated in the bill falls far short of recognizing the legitimacy of plan members' interest in the administration and control of pension plans and the funds their deferred wages helped to create. It should be obvious that no one has a greater direct interest in the way a pension plan is administered than the beneficiaries of the plan. Yet by limiting its requirement for plan member involvement to participation in an advisory committee, Bill 170 treats beneficiaries as if they were outsiders.

Basic democratic principles demand change: Ensuring worker representation in plan administration is basic to a reformed pension system. The employees directly affected by the pension plan are in the best position to ensure that their pension plan is operating as promised and to point out any potential errors or abuses. The granting of direct participation to workers in pension plan operations is consistent with the democratic process and is essential to providing confidence in the general public that the private pension system can work for the benefit of pension plan beneficiaries.

Pension security on sale of business: In today's economic climate, protection of rights of pension plan members in cases in which the businesses are sold is an extremely difficult and important problem for pension plan members. The uncertainties of the market, particularly the industrial sector, combined with the rash of corporate takeovers, consolidations and restructuring, can make these situations both more common and more difficult to deal with.

The sale of a business can have a very serious impact on the rights of pension plan members unless a union representing plan members has been able to negotiate protective language into a collective agreement. A sale can often lead to the termination of the plan established by the vendor and its replacement by a new plan established by the buyer. The first plan is frozen as of the date of the sale, and the new plan picks up only current service costs.

This problem is particularly difficult where the vendor operates a defined benefit plan. The sale of a business can be a problem for these plans, even when the plan moves with the business, when successor employers flatly refuse to provide for benefit improvements for past service. When a sale results in the vendor retaining both the plan assets and the pension liabilities for past service, it is often next to impossible to negotiate past-service improvements from the new owner.

When a business is sold, the Ontario Labour Relations Act binds the new owner to the terms and conditions of a collective agreement in force between the vendor and its employees at the time of the sale. The contractual rights go with the employees and the business.

The same principle should apply to a pension plan. The Pension Benefits Act should require that when a business is sold, the pension plan and fund applicable to the employees involved should be transferred to the new owner along with the business. All assets in the pension fund should go with the plan.

To ensure that the security of pension plans earned with the previous employer are not undermined, in the case where a pension fund has been unfunded, has unfunded liabilities at the time of the sale, the vendor-employer should be required to guarantee all past service amortization payments outstanding at the time of sale. This would not require that plans being transferred be fully funded as a condition of a sale, but it would protect the rights of employees. Employers would not be able to accumulate substantial unfunded liabilities and then escape those obligations by selling off the pension plan along with the business.

Rather than go into the other issues raised in our brief in detail, I would like to summarize the main recommendations quickly:

Vesting rules: The split vesting requirement in Bill 170 makes no sense in principle and in practice would result in an administrative nightmare. The two-year vesting requirement should apply to all service.

Eligibility: Eligibility for pension plan membership should be tied directly to employment status. Once a reasonable probation period has passed, eligibility should be automatic. In no case should eligibility be delayed longer than six months.

Portability: Portability of pension benefits is of real value to employees who terminate prior to retirement only if deferred vested benefits are indexed. If pension benefits are not indexed, equitable treatment of deferred vested beneficiaries will require extensive regulation of the method used to calculate the value of deferred vested benefits. The act should require portability into and out of pension plans.

The role of unions in pension plan administration: The administration of the Pension Benefits Act must recognize the fact that pensions are an

employment benefit subject to collective bargaining. Where members of a pension plan are represented by a union, no amendment to the plan should be registered unless it has been approved by both parties, and unions should be entitled to receive notice of, participate in and make recommendations in connection with any proceeding under the act relating to the pension plan or any member of the plan.

Part-time employees: The rules for part-time work eligibility in Bill 170 will benefit only the highest-paid, part-time workers. The eligibility criterion for plan membership should be one day of work per week or the equivalent of seven hours per week.

Discrimination on the basis of marital status: Section 54 of Bill 170 would prohibit the negotiation of surviving spouse benefits that provide an incentive for plan members to select a survivor option. The process is inconsistent with the other section of the act and would have a detrimental effect on efforts to deal with the problem of poverty, in particular, among elderly women. It should be deleted.

Retroactivity: The committee has undoubtedly been warned by many representatives of employers to avoid applying changes to the act retroactively in pension plans. It is argued that any improvements mandated by the legislation should be restricted to service after its effective date and should not apply in any way to pensions in pay. Application of new standards to past service or to pensions in pay would make the legislation retroactive and, thus, unfair to plan sponsors.

We have heard such arguments in connection with two of the proposals we have made today: making two-year vesting of pension benefits and pension portability applicable to all credited service, regardless of when it is earned, and applying indexing rules to pensions in pay.

There are two major problems with the retroactivity argument, one logical and one political. First, the suggestion that applying new standards to past service amounts to retroactivity reflects a misunderstanding of the way pension plans typically work.

In most pension plans, the value of the benefit at retirement attributable to past service is not fixed until that retirement date. In negotiated flat benefit plans that provide for a benefit based on a fixed number of dollars of monthly benefit for each year of service, the benefit formula is updated regularly and applied to past as well as current service. In most earnings-related plans, the benefit payable for past service is either updated automatically in the case of final-average plans or adjusted regularly in career-average plans.

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In either case, making changes in rules applicable to past service is by no means unusual. In fact, it is built into the way these plans operate. It does not amount to retroactivity in the normal sense of the word, and the fact that changes mandated for past service will have to be funded by plan sponsors does not make those changes retroactive either. Many other changes that affect funding have been mandated by legislative change without generating retroactivity arguments. Such changes are also made routinely in collective bargaining. The only difference is that they would result from legislation rather than collective bargaining or unilateral employer action.

It is also worth noting that changes that affect the funded status of pension plans with respect to past service are extremely common. For example, a simple change in the interest rate assumption used by a plan actuary will retroactively change the funded status of past service benefits. Application of new pension rules to past service would be no different from the perspective of plan funding than changing the actuarial assumptions on which contributions to the fund are based. If the legislation were to reach back and grant earlier vesting to employees who have already terminated without vested benefits, for example, the retroactivity objection would be legitimate. That is not, however, what is being argued.

The retroactivity argument is no more applicable to adjustments to pensions in pay than it is to changes in vesting rules. We are not suggesting that pensioners be compensated retroactively for benefits lost in the past because their pensions were not indexed. We are suggesting that, starting with the effective date of the legislation, pensions in pay be adjusted for the erosion of their value that has taken place since that value was established. Such adjustments would not be unusual. A small number of pension plans already incorporate full indexing. A much larger number of plan sponsors make regular adjustments to plan benefits to offset some impact of inflation.

There is an overriding reason for the retroactivity complaints to be ignored. In our view, it is politically unacceptable to apply changes in the rules applicable to pension plans only to service earned after the legislation's effective date. As far as early vesting and portability are concerned, those who make the retroactivity arguments should try explaining to workers in their 30s that they have got two-year vesting, but it will only apply to a small portion of their pension benefits.

For indexing, the political argument is even more powerful. If inflation protection is not applied to past service and pensions in pay, it will be a generation before the benefits of mandatory indexing are felt by the retirees, and that will not be seen by anyone as an acceptable response to the demand for inflation protection.

Mr. Chairman: Thank you. I have trouble, not listening to you but following you in here. You mentioned a 45-page brief. Have we got another brief from you, or has it been condensed?

Mr. Gerard: There is a substantial brief that will be circulated. If you do not have it, you will be given it. This is a summary of the brief.

Mr. Chairman: Fine. Thank you.

Hon. Mr. Kwinter: I would like to respond to Mr. Gerard. He asked me if I would clarify the situation and he wanted to hear a statement.

I would like to take this opportunity to reaffirm our strong commitment to introduce mandatory inflation protection in the context of our pension legislation. Ontario was the first province in Canada to commit to taking action on inflation protection for pensions. Because of that, we have a special duty to ensure that the direction given for implementation is well reasoned and effective. We want to know and weigh all the possible approaches and the costs and impacts on plan members and sponsors. To that end, we established the Friedland task force to come up with and determine the most appropriate formula and phase-in procedure for inflation protection.

Their mandate was, and I want to assure you is--there has been no change whatsoever in their mandate--to consider the following:

The needs of employees to have retirement income protected from the effects of inflation.

The needs of employers to have finite and affordable pension costs.

The importance of maintaining and expanding the private pension system, and, in particular, defined benefit plans.

The impact of any formula on active employees, existing pensioners and deferred pensioners.

The formulae and recommendations relating to inflation protection contained in previous pension studies from Canadian jurisdictions and issues studied by other jurisdictions and any formulae currently used in pension plans.

The relationship between inflation protection and other pension reform items or issues in the Pension Benefits Act of 1986, such as the 50 per cent employer cost, treatment of surplus, portability and vesting, the appropriate phase-in and implementation period for inflation protection and the appropriate period to be provided to plan sponsors to fully fund inflation protection.

That is their mandate. That was their mandate and it has not changed. We have given them our complete commitment to that. Again, I want to state that from the day I introduced this legislation, this government's position has been that it is committed to mandatory inflation protection.

Mr. Gerard: Let me say at the outset that I did not come here to get into a debate with you about anything and I do not want any of my comments to be taken overly personally. But with regard to the matters that have been raised in the electronic and print media in the last several days, on behalf of the 80,000 members I represent and our involvement with the Ontario Federation of Labour's 800,000 members, until we see a legislative amendment sponsored by you, sir, from this committee, incorporating the principle of inflation protection and protection of surplus assets, with all due respect, your comments will simply be nice words.

I want to express my outrage when I hear you say you are committed to inflation protection and then I read in the paper that the Ontario Chamber of Commerce has moved to your position. I find that very difficult.

Hon. Mr. Kwinter: Have you read the transcript?

Mr. Gerard: I have read what I was provided with and I have not read the transcript.

Hon. Mr. Kwinter: Let me just--

Mr. Gerard: I am not finished yet, Minister.

Hon. Mr. Kwinter: Okay, that is fine.

Mr. Gerard: I did not come to get into a debate, but I want to say, with all due respect, that I accept you at your word. The best way to fulfil that is to have a legislative amendment to Bill 170 from this committee, incorporating in principle the concept of inflation protection, and then we will see what the Friedland task force comes up with. We have created a

situation where that task force has no credibility, certainly among my membership, and I will be surprised if I am not raked over the coals for making a presentation to it. I think it is important that you know that.

Hon. Mr. Kwinter: If I can just explain to you what the situation was, when the chamber of commerce report talked about mandatory inflation protection, the first thing it said was that the chamber of commerce is opposed to including mandatory inflation protection in Bill 170 and is committed to waiting for the task force to report. That was the first thing they said about mandatory inflation protection in their brief.

What I said is that they agreed with me. That is exactly my position. In that same exchange, I said in a response to Mr. McClellan that their position is not like mine because they do not agree with mandatory inflation protection. I do and I stated that. I stated unequivocally that our government is committed to it. What has happened is that I agreed with their position about not putting it into Bill 170. I agreed with their position that they should wait for the task force to report. Where we disagree is that they are opposed to mandatory inflation protection and we are in favour of it. That is in the transcript, and anyone who can read it with an impartial, reasonable approach will see it. It is as simple as that.

Mr. Gerard: I sincerely hope your commitment to inflation protection will be incorporated as a recommendation of this committee to incorporate the principle of inflation protection in Bill 170. One of the reasons, after some trepidation, we agreed to have one of our own people take part in that Friedland commission was that we were made to understand from the highest source that this government was committed to the principle of inflation protection.

I am not sure, and you may or may not know--I do not want to let you think I make all my statements based on what I read or see in the media--but I suspect very strongly that some time this spring, this summer or this fall there is a possibility of an election. If we do not have a recommendation from this committee to incorporate inflation protection into Bill 170 before the election, I will certainly doubt the government's commitment to inflation protection. With all due respect, to say you are in favour of inflation protection, then to say that it may be too expensive to implement, is grabbing on to the hysteria that has been generated by the plan sponsor community.

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I just finished some bargaining meetings in the past couple of days. We are not here to divulge our bargaining plans or our strategy when there are some media people here, but very clearly in several meetings on costing of the pension proposals, we have managed to take the initial hysterical comment of the employer and cut it in half. I read the headlines from General Motors that it is "just astronomical" but when we talk to people within our organization and within other organizations who understand pension plans, nobody can rationalize where those kind of figures come from.

I want to say again to the committee and to the minister that to generate the kind of headline that says "Probe May Find Pension Reforms Too Expensive," on the heels of a headline that says you are opposed to inflation protection, on the heels of a headline that says, by the employer and the pension industry, that establishment of indexed pension plans will mean that people have to be abandoned and will not get pensions--I do not get all my information from the media, but if one looks at the context of three or four

separate hysterical statements, one is left with some very serious doubt about the government's true intentions.

Again, I want to say to you that I take you at your word; I have no reason not to. But you will certainly reaffirm your word when you recommend to this committee that it incorporate the principle of inflation protection in Bill 170, subject to whatever formula the Friedland task force comes up with. Not to do that, in the light of what has transpired, puts your credibility and the credibility of your government, certainly the credibility of the Friedland task force, in serious jeopardy. I think the workers of Ontario deserve better than that.

We are quoting from the industry's own comments, in the light of the fact that the industry is saying "if we had to provide adequate pensions, we would collapse." We have to decide. Are we going to have a private pension industry that uses us as a milking cow for sources of investment capital? I do not have to tell you. You are the minister. You know how many corporations have raided the pension funds.

I come from a company that raided the pension funds. I am sure Inco has taken it out. We come from a company that takes pension money and uses it to defer its contributions. If I represent a small group of workers that bargain 50 cents an hour into their pensions and the employer generates a surplus and only puts in 25 cents an hour, that 25 cents represents a little over \$500. If you were stealing \$500 from every worker in this province, you would be put in jail. That is legalized theft of workers' deferred incomes, and this government has to put a stop to it.

Mr. Chairman: I wonder if we can go now to Mr. McClellan.

Mr. McClellan: I understand from what you said, Mr. Gerard, that when the proposal of the Friedland task force was put to representatives in the labour movement, it was put to you that it would be an implementation task force, looking at ways and means but not looking at the principle. Is that correct?

Mr. Gerard: Yes.

Mr. McClellan: Just so you are aware of what the minister did say on Wednesday, April 8, 1987. I am sure the minister will want to read along with me. It is on page G-24 of the transcript. First, he said, "My concern is exactly the concern that was expressed today." He is talking about the concern expressed by the chamber of commerce. "You may get it, but you will have no pension plans to index. Because what industry will do is they will either go to a defined contribution plan or they will refer back, to go to a saving RRSP....What we are going to do is destroy the system."

Then he went on to say: "We have said, 'Let's get together a group that represents all of the parties that are going to be affected and let them take a look at it.' And let them come back to us and say, 'This is what you should do.' And they come back and say, 'We have looked at it and it makes no sense and that you should abandon your policy even though you are in favour of it.'"

It is very clear that the kind of commitment that was given to you, I understand from what you said, by the Premier (Mr. Peterson) himself--

Mr. Gerard: Let me make sure the record is clear. The Premier did not personally tell me; the Premier personally told our nominee.

Mr. McClellan: That a commitment that had been made no longer stands, because it is clear from what the minister said on Wednesday that it is open to the Friedland commission to report back that mandatory inflation protection is impossible, that it cannot be done and that it should be abandoned as a policy. So I accept the validity--

Mr. Gerard: So long as it is abandoned for politicians as well.

Mr. McClellan: What is sauce for the goose is sauce for the gander?

Mr. Gerard: That is right.

Mr. McClellan: I agree with you when you make a strong recommendation that the legislation enshrine the principle of mandatory inflation protection and that we leave it to the Friedland task force to do what was promised it was supposed to do, which was work out ways and means and to solve some of the technical problems. If we do not, we can all kiss inflation protection goodbye.

Mr. Chairman: Minister, a short wrapup please.

Hon. Mr. Kwinter: I just want to leave with you the fact that we are committed; I am telling you that we are committed to mandatory inflation protection. I have read you the terms of reference of the Friedland task force. That is our position. It has not changed. That is the position of this minister and that is the position of this government.

Mr. McClellan: Were you telling the truth on Wednesday or are you telling the truth today? The two statements are incompatible.

Hon. Mr. Kwinter: You have to take that in context of what we were talking about. That was in the area of the (inaudible) of the discussion.

Mr. McClellan: Is the Friedland task force a feasibility--

Hon. Mr. Kwinter: It is not a feasibility study. I have told you that and I have told that to you repeatedly. I am saying to you this is where we are. Our position has not changed. I have reiterated that to the members of the task force. They know it.

Mr. Gerard: Could I ask a couple of very brief questions?

Mr. Chairman: Yes.

Mr. Gerard: When is this parliamentary general government committee supposed to report?

Mr. Chairman: We have been given, as all committees of the Legislature were, certain sitting days during the recess and we sit just today, tomorrow and Thursday. Then we have to get further sitting time, which presumably will be for clause-by-clause debate, from the House leaders. That will, in all likelihood, not start until April 28 at least, when the House returns. More than that, I cannot tell you.

Mr. Gerard: That is fine. I just had some concern about the time frame. As I have said, I did not come here to be argumentative, but I want just to close by letting you know the views of our union in a very brief summary.

In the light of the very strong comments the minister was trying to impart to me, my belief is that we are left on this issue with, quite frankly, only three alternatives: that this committee incorporate the principle of inflation protection along with many other principles in its recommendations when it is finished. I would say that if it does not do that, then the credibility of this minister is in jeopardy and he should resign or the Friedland task force should be disbanded, because of all the nice words, the only thing that is going to prove it to our members is if it is in the amendments to this bill.

I believe that the minister is sincere, and I have no reason to disbelieve him, but we will see that happen.

Mr. Chairman: The committee understands the point you are making and thanks you very much.

The next presentation is from the Canadian Co-ordinating Committee for Jointly Truſteed Multi-Employer Pension and Benefit Plans. I understand we have Mr. Rivers, Mr. McCambly and Mr. Koskie.

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Mr. Chairman: If one of you would identify yourselves to us, then please proceed with your presentation.

CANADIAN CO-ORDINATING COMMITTEE FOR JOINTLY
TRUSTEED MULTI-EMPLOYER PENSION AND BENEFIT PLANS

Mr. McCambly: Mr. Chairman and members of the committee, I feel sorry for you, first of all, because I was sitting back there watching, and I think those must be heat lamps rather than--

Mr. Chairman: Yes; not quite mild.

Mr. McCambly: My name is Jim McCambly, and I am chairman of the Canadian Co-Ordinating Committee for Jointly Truſteed Multi-Employer Pension and Benefit Plans. Cliff Evans is the secretary to that committee and, unfortunately, was not able to be here today. On my left is Bill Rivers, a consultant for an actuarial firm and Ray Koskie, our legal consultant .

At the outset, I want to say we have quite an extensive brief that has been tabled with you. We have no intention of reading it, but we will leave it for your consideration at your leisure. However, there are areas I think we need to talk about a bit. With that, I would hope to leave sufficient time for questions, because I think it is quite a different situation we come here with in terms of not representing a particular union or a particular industry, but rather a type of pension plan that has some pretty unique characteristics.

I would like to say we are pleased the committee has given consideration to some of those characteristics, probably in a better way than anyone has attempted to address before. Nothwithstanding that, there are some areas we feel need to be changed. One of the fundamental starting points is to make sure the committee understands, from our perspective, what a multi-employer plan is.

In our definition, we suggested a multi-employer pension plan is where two or more usually unrelated employers contribute, with a result that the service, with all participating employers, is aggregated in determining the

individual benefit. These contributions are not necessarily the same in every plan; very often, they are related to cents per hour or dollars per week or even, in some cases, percentages of pay.

The important aspect in that context is that, in every instance, the cost to the employer is fixed. It is fixed by collective agreement. It is not variable. As I say, as part of the collective agreement, it is not able to be reduced because a plan is operating in an exceptionally efficient way. There is no reduction that can come that way. There is no opportunity, at any time I have ever witnessed, for an employer to recover moneys that have been paid into the plan, regardless of how well the plan is doing.

With those points in mind, I would want you to be clear that all the plans we represent are jointly trustees plans, not always equal, but always with at least 50 per cent of the trustees representative of employees. So a lot of the normal problems that happen in single-employer plans disappear with multi-employer plans.

The areas of coverage are, for example, entertainment, maritime construction, textiles, pulp and paper, food processing, retail, transportation, printing, needle trades, mining, manufacturing and service industries.

From its base, our co-ordinating committee represents about 500,000 breadwinners, and there are at least some 250,000 additional members of unions who are covered by this kind of plan in other areas that are not directly affiliated with our committee, although I am sure our views are very similar.

We acted in preparing and presenting a submission for the Pension Commission of Ontario subcommittee on multi-employer plans, and we have appended that at the back of our brief. I suggest that any time there is any question about our position on any of these points, you might well find it in that submission. Otherwise, the areas that we would like to highlight will not even deal with all of the ones that were in the executive summary, but some require some specific attention.

To start with, in terms of the definition, we had a very specific definition in our original proposal, but we have come back to try to address this issue with regard to the particular draft bill that has been presented. There are a number of plans that are called multi-employer plans that we would probably more aptly describe as multi-unit or multiple-employer units, but they do not have a jointly trustees administration.

In order to enable all of those plans to be recognized under the bill, the definition that has been prescribed is quite appropriate, but it does not recognize the situation where a multi-employer plan has been originated because a collective agreement consummated between employers and employees caused the plan to come into effect. So in order to expand that definition slightly in terms of the act, we suggest that the words "collective agreement, participation agreement or any other agreement" be added to the definition that is already there.

Tying in with that, in terms of the registration area under clause 8(1)(e), there is a provision in there talking about a collective agreement. We have concluded that every plan ought to have the right to be recognized as a multi-employer plan if 50 per cent or more of its trustees are representative employees.

I hope that we can emphasize to you that some of the horrendous things that you were trying to deal with--the last presentation was an example--virtually disappear when the employees are able to have at least 50 per cent control of their own destiny, their own funds and their own pensions. I advocate strongly on behalf of all of our committees that we encourage as many plans as possible to get into that method of operation.

We have suggested that clause 8(1)(f) be deleted, but that is something to which you might give consideration to encourage, strongly, plans to become jointly trustee. If not, then it might be that clause 8(1)(f) should stay if you feel that immediate step is not appropriate.

We will come back to that question of definition. If anybody has any concerns about it, I will be glad to deal with them.

In terms of the conflict of interest, which appears on page 15 of the submission, I will just touch on this briefly because we feel that the reference to conflict of interest in the bill goes too far. It is virtually impossible in most plans to avoid some form of conflict of interest, but in multi-employer plans, it becomes even more difficult because there are employees and employers consistently operating, managing and administering the plan as trustees.

We have given a number of examples of how these kinds of conflicts might arise. We suggest to you that you take a look at the provisions that were put into the Employee Retirement Income Security Act, section 408, that recognize the fact that trustees of multi-employer plans have an unavoidable conflict of interest and there are provisions there, that probably should be appropriate, that the superintendent in Ontario be given the right to establish an exemption procedure for the purpose of this subsection. The ways that exemptions might be appropriate, again, are identified, or we could go into more detail on this.

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With regard to eligibility, which appears on pages 20, 23 and 24 of the brief, the matter of eligibility in multi-employer plans is considerably different from that of a single employer. A period of time, particularly with reference to consecutive employment, is virtually impossible to identify in areas like construction where there are a few days' work, a few weeks' work, periodic employers and so on.

What we have recommended and, I might say, what has been accepted in Alberta, is that an identity of a minimum number of hours, such as not less than 350 hours in each of two consecutive calendar years, should be used to determine eligibility, so you have a minimum number that might be accumulated in a period larger than one year.

Just to follow on with that, there is the matter of vesting. The top end of that, in terms of a maximum, ought to be at 1,400 hours per year or 2,800 hours acquired at any time during a two-year period. You could go from musicians to construction workers to miners to various occupations; and the opportunity to acquire a vesting right may be compacted or it may be spread or whatever. So those two requirements, in terms of eligibility and then in terms of vesting to accomplish a two-year vesting period, again need to be identified in hours, and we are suggesting 1,400 hours per year or 2,800 hours in 24 months.

With regard to the reciprocal arrangements, that appears in some different locations. I think it appears in different formats on pages 26, 29 and 11. I would just like to summarize this whole area and point out to you that there has been a tremendous effort, by virtually all plans in Canada that come under the multi-employer concept, to achieve various types of agreements that will acquire benefits for the participating employees. But they are not all money-follows-the-man; as a matter of fact, that is not suitable in some instances.

For example, if two or more plans assemble accumulated values that people have acquired in different plans and accumulate them to a total value, even though they may be in different provinces or different locations, the key thing is to be sure people get the value that has been accrued within each of those plans. A good way to give you an example of that is that it was certainly not long ago when we were looking at 10-year vesting. Some of the plans are voluntarily five and two; you might have two years in one place and three years in another, which would accumulate a five-year vesting period. But I am just pointing out that we need to be sure to allow not only money-follows-the-man but also an accumulation of benefits in more than one plan.

Third, the potential of people taking money out of plans, I think, is a very logical route to go when you are talking about single-employer plans or where the individuals do not have any say over the destiny of their own money. That is a logical approach. But in what we are identifying as multi-employer plans, there is always a majority, or at least 50 per cent of the representative status for the benefits of those individuals is from the individuals collectively.

In our estimation, that is the same as an individual representation. Once that plan has been actuarially sound and accounted for and continues to plan benefits for all the members over an extended period of time, to say that people might have the opportunity to pull their money out of it and put it in registered retirement savings plans or something else where they might be able to pull it out a week or two later, is in our judgement from a lot of experience not necessarily in the best interests of the individuals, because our plans have proven to be very successful in their investment strategy etc. It also puts the plan in a very difficult actuarial position. The whole bottom line of that question comes in the fact that the individuals are already represented. It is not as though somebody else is making the decisions. There is a collective decision from their trustees who never have less than 50 per cent control of the plan.

I will mention one other point and then probably throw it open for questions or comments from my colleagues, and that is with regard to page 34, the speedy arbitration or the proposal regarding delinquent contributions. The proposal suggested there should be emphasis on penalizing delinquent employers and their directors rather than creating a potential liability against the administrator. When we are looking to resolve this question in the multi-employer plans, simple recognition is not the answer. We feel there need to be some teeth to ensure that there is an ability to collect delinquent contributions or premiums.

We say what is needed is a speedy arbitration process that could be initiated by a multi-employer plan, trustees against employers for the purpose of recovering delinquent contributions. That is the recommendation of the subcommittee. Again, that has been considered previously as a very positive approach to acquiring delinquent employer contributions.

There are other areas about which we could go on for hours and hours, I suppose, because the operation of the multi-employer plan business is probably the biggest single initiated area of joint employer-employee sponsored private plans. I suggest they are as good or better run plans than any in the country. It is really important that we use all our efforts to be sure that they are able to continue to do the kind of job they have been doing and if possible expand the private pension plan field to more people and not create legislation that, in trying to correct other problems in the pension field which we fully agree exist, is going to cause a detrimental effect on these plans we are representative of.

There may be other things you want to question us on, but I will lead into that in a moment. Is there anything I have missed?

Mr. Koskie: I think you should appreciate that what we are doing here is a very unique situation. The multi-employer pension plan--we call it MEPP for short--was never really dealt with by pension legislation before. As strange as that may seem, we have many of these plans registered in Ontario but the legislation at the moment does not purport to deal with MEPPs. In fact, the Supreme Court of Canada in a case I argued a few years ago upheld the Ontario Court of Appeal that this legislation does not apply to MEPPs. Nevertheless, we have all these MEPPs that are registered with the Pension Commission of Ontario and there is no mention in the legislation about this kind of plan.

For the first time, we have government trying to come to grips with MEPPs. What disturbs me and my clients is that the pension commission, because it really knew very little about how MEPPs are administered, struck a subcommittee to advise it on recommendations of amendment to the Pension Benefits Act dealing with MEPPs. That committee consisted of members of all aspects of the MEPP industry--employer trustees, union trustees and professionals. We came up with a unanimous package of recommendations to the Ontario pension commission which that commission adopted. We met with the commission to explain the unanimous recommendations, and those recommendations were supposedly put to the Canadian Association of Pension Supervisory Authorities. From then on, things seemed to go the other way.

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* We do not understand that. We spent a lot of time and money advising the government in the area of MEPPs. We came up with unanimous recommendations and yet a good many of them are not included in Bill 170. Of course, one of the most important ones is the definition of a MEPP. We struggled with that and we persuaded the commission that our proposed definition limiting a MEPP to a pension plan arising out of a collective agreement is the one that made the most sense in the circumstances. We see in Bill 170--and indeed when we saw the predecessor of the draft bill--a complete change of approach on the definition of MEPP.

As Mr. McCambly has indicated to you, we have proposed a compromise on the definition of a MEPP. We are willing to say we will not limit it to pension plans arising out of a collective agreement. We will include in the definition of a MEPP any type of multi-employer plan, including those that arise out of a collective agreement, but it has to be in line with clause 8(1)(e) of Bill 170, which applies only to MEPPs. Clause 8(1)(e) deals with the joint trusteeship. At the moment, clause 8(1)(e) is applicable only to a MEPP arising out of a collective agreement. It is our position that all MEPPs should be treated in the same way, and therefore, all MEPPs should be required

to have at least 50 per cent representation of employees. That is the essence of our proposal. A rose is a rose is a rose. We should not treat different MEPPs differently from others. They should all be treated on the same basis. That is the essence of our proposal.

Another area in which we made some very strong recommendations through the subcommittee and that were adopted by the subcommittee is the handling of contribution arrears to MEPPs. Our subcommittee was unanimous in its recommendation that the trustees should have resort to the speedy arbitration process by which to recover delinquent contributions. Again, the pension commission was persuaded on that, but we do not know what happened thereafter.

In my respectful submission, the way in which the government is dealing with this matter in Bill 170 simply does not deal with the problem at all. It completely avoids it. All it says is that the administrator must advise the superintendent of the arrears of contributions within 60 days after they come to the knowledge of the administrator. So what? There is no follow-up on that. What, if anything, is the superintendent going to do?

All the bill purports to do beyond that is to give the trustees the right to sue in court. All that really does is make more work for the legal profession, which is not in the best interests of my clients and is not in the best interests of the beneficiaries. The court process is clogged enough as it is. I need not tell you. You know the problems that exist there. The speedy arbitration process has worked in labour relations and it can work in this area, too. We very firmly advocate that that be reconsidered by you and put into effect because that will ultimately affect the pension benefits which the workers in Ontario will receive upon retirement.

Those are just the few points I wish to highlight.

Mr. Rivers: I would like to comment on three other points that are supportive of our position of why multi-employer plans are unique and why they have worked so well. There are two issues you have probably been talking an awful lot about in the past few days that we really have not mentioned too much. One is surplus withdrawal. Multi-employer plans do not have a problem with surplus withdrawal. Purely and simply, surplus from actuarial gains in a multi-employer plan is used to increase the benefits for the beneficiaries of the trust fund. The money does not go back to the employers who contributed under any circumstances.

The second area is inflation protection. Again, the gains that arise in a multi-employer plan are not used to reduce employer costs. They are not used to give it back to the employer. They are used to increase the benefits. Typically, in a multi-employer plan where there is employee representation, decisions are made to improve the benefits not only for the active participants but also for the pensioners.

For those two reasons, multi-employer plans have dealt very nicely in the past with the surplus issue and with the inflation protection issue, and we would suggest to you that you study that carefully.

My final comment is on the portability issue. Mr. McCambly made a brief comment about it. Ever since they have existed, multi-employer plans have entered into reciprocal agreements with other multi-employer plans, so that when you have a mobile worker, principally in construction, whether he is moving from being an operating engineer to being a labourer in Ontario or whether he moves as a labourer from Ontario to Alberta, these reciprocal

agreements bring about portability. As a result, we do not think portability, as proposed in Bill 170, is necessary for multi-employer plans and in fact could be detrimental to them.

Mr. Koskie: If I may, on the question of portability--

The Vice-Chairman: Go ahead, but you are cutting in on your time. There are a few people who would like to ask you questions.

Mr. Koskie: I want to point out that subsection 43(1) of the bill does not make sense. The portability provision does not make sense in the case of multi-employer pension plans because it talks about a person being entitled to apply for the transfer whose employment with the employer is terminated.

In a MEPP, when he works under a collective agreement, a worker will go to work for one employer to another employer to another employer to another employer, all under one collective agreement, and each employer is required to contribute to that same pension plan. This wording may fit a single-employer plan but it does not make sense in a MEPP at all because of the peculiar situation.

Mr. Lane: I think my question has been answered. That was a recommendation for multi-employer plans to be exempt from the new portability requirements. I think you have just told us why. Up until then, I did not know why that would be the case. I can see that now, so I have an answer already.

Mr. Lupusella: I have two questions and one was also answered by Mr. Rivers. It is in relation to the issue that there is no surplus withdrawal based on the multi-employer pension plan. The other thing I may need clarification on, and you can tell me, is how the principle of ownership is applied in the multi-employer pension scheme.

Mr. Rivers: If I understand the question, there is the principle of ownership of the contributions.

Mr. Lupusella: Yes.

Mr. Rivers: There are a few exceptions, but almost all multi-employer plans are noncontributory, which means there are forfeitures. For the most part, vesting has been equal to the minimum legislation, although many of them have moved off the 10 and 45 in Ontario to at least five years. But if you are not vested, then there is a forfeiture, as there would be in any noncontributory plan. However, funding of the benefits is on a pooled concept, so all the forfeitures are used to benefit those who remain as actives, either vested or nonvested.

Mr. Lupusella: I think you have clarified my doubt. Actually, you are following the principle that is explained within the legislative power of the province, but there is no particular definition of ownership within the plan per se. Am I correct? I had the impression there was another definition of ownership within the plan besides the legislative bylaw that governs the plan in the province.

Mr. Rivers: Do you mean individual ownership? The contribution goes in on behalf of an individual and then he has ownership of that contribution?

Mr. Lupusella: Yes.

Mr. Rivers: For the most part, and there may again be exceptions, if it is a money purchase plan, there might be an account kept and there could be declared ownership, but typically, they would follow whatever vesting rules the particular plan has adopted to create the right or the ownership.

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Mr. Lupusella: You understand my confusion. We have so many private pension plans in Ontario. They do not have the general guidelines of government plans.

Mr. McClellan: We have heard a number of presentations. It is certainly very persuasive and convincing that there need to be separate provisions for multi-employer pension plans. I wish we had more time, and I think I will pursue this outside the committee hearings, but I am fascinated with the rather casual acceptance, if I may put it that way, of the notion that surplus funds belong to members of the pension fund as opposed to the kind of hysteria we are getting from all the business representatives who are coming before us, yet you are before us as joint management-employee deputations. I think we will want to know a lot more about MEPPs before we go too much farther.

The only thing that made me a little nervous was not your brief at all, but the presentation made by the Council of Ontario Construction Associations this morning. I assume that many of the trade associations that are listed as members of COCA are also participants in MEPPs, yet their brief, when they put it this way, was kind of reactionary. They were even opposing two-year vesting. They certainly opposed surplus withdrawal restrictions. I guess I need some reassurance that we are not hearing two things.

Mr. McCambly: I am not sure what they said on surplus, but I would be anxious to see what they said on withdrawal restrictions.

In terms of the two-year vesting, there is no doubt that it is going to tax our plans. They are going to have to make adjustments and it is going to be a cost item that they are going to have to come to grips with. Most of our plans are already getting down to five years. We have one major plan that is already at two years and, quite frankly, it has cost it quite a bit to do that voluntarily.

I guess we are more or less saying that two years is a fait accompli. We are prepared to deal with that. It is going to be a cost item and it is going to trade from one pocket to another. If you are going to be dividing one benefit, those others either might have to not be increased or suffer slightly, but we are not opposing the two-year vesting.

I might also say there are some people who would have liked to have seen it come in a little more gradually, but there are things that are very positive about the two-year vesting. The whole question of portability and an employee acquiring rights is substantially reduced when you get that down to two years. It does tend to reduce some of the other problems.

I want to add something else, and it may be apart from that brief. Actually, I am not paid by the co-ordinating committee; it does not have that much money, not that I am worth that much. I am president of the Canadian Federation of Labour, so in that role we have a lot of affiliated unions that are in various walks of life. Not all of them are fortunate enough to be covered by a multi-employer pension plan. Not all of them are fortunate enough

to have jointly trustee arrangements for their pensions so that they have a say over the eventual success or failure, if necessary, of the pension plan they have money in. We have people who have been in plans that have been gutted by removal of excess earnings or who have had premiums reduced in single-employer situations. Primarily, we strive to have employees responsible for their own investments.

If there is anything this committee could do in coming out with a recommendation such as we are suggesting, it is to get employees responsible for their own welfare.

A lot of unions that traditionally have said, "Mr. Employer, provide these benefits for us; here is our collective agreement; provide these benefits," but do not really have a say in the plan, I think now would like to see that turned around and would like to see it very different after the fact, sort of when the horse is out of the barn. I do not think it is too late. It is still time to continue that role, even to public service pension plans. I do not give a damn what kind of pension plan it is. I think employees have every right to have at least 50 per cent of the say in what happens in those plans.

We will probably make a submission to this task force that is going to be looking at the question of some form of guarantee in terms of inflation protection or indexing of pensions. But at this point, I am relatively satisfied to say that within the multi-employer plans, the fact that the employer's contribution is constant--it cannot be changed--in good times and bad times, the fact that in the past 10 years, when inflation rates hit 19 per cent and some crazy rates, our plans benefited greatly and not one cent of that went anywhere but to employee benefits.

You start to put these things together where no money can be taken out of the plan for any other purpose. I feel that our plans should be able to take into consideration the inflation protection issue and deal with it on an ongoing basis and accumulate reserves that should be able to take that in as one of the benefits, an important benefit protection. The only thing that is also important there that we have to pay attention to, or maybe it needs to be legislated, is that if there is any benefit given to plan members, then it must be given to retirees. You cannot make fish of one and fowl of the other. If you are going to make a change for one, then you must look after the retirees. But by the same token, it should not go the other way around. It should be good for both retirees and plan members.

The Vice-Chairman: I would like to thank you gentlemen very much for appearing before the committee. Your brief was very helpful and we are looking forward to getting into clause-by-clause.

Mr. Rivers: Can I just have an explanation from the chairman? I heard the other chairman who was attending at the previous session explain the process when the Legislature reconvenes. Will the bill be discussed clause by clause in the Legislature? Is that the plan?

The Vice-Chairman: In this committee.

Our next presenter is Mr. Rogers, who has been waiting patiently all day.

Mr. Rogers: I just wanted to watch to see how things went.

The Vice-Chairman: Take your time. Whenever you are ready, you may start.

Mr. Rogers: You all have copies of the presentation?

The Vice-Chairman: Yes, we do.

GARY R. ROGERS

Mr. Rogers: Mr. Chairman, honourable members of the committee, thank you very much for giving me the opportunity to speak to you today. Your work is very important. It affects a lot of people in Ontario and it is something that I feel very strongly about.

The subject of my topic is called An Individual Perspective of Employer Pensions and Bill 170. What I want to talk to you about is to briefly explain my interest in Bill 170, what I think the purpose of an employer pension is, some of the things an employer pension is not, some of the problems of the current pension system and what I think an ideal pension system might be. Then I am going to discuss my position on Bill 170 and some things I think could be done to Bill 170 to improve it.

My interest in Bill 170: I am an employee. I have worked for six employers in my working life. I am around that age where you start to worry about pensions and particularly interested in what I can or cannot do with a pension. Depending on whether I take early retirement or not, I am probably within five to 15 years of retirement.

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As your committee deliberates the bill, I think you should always bear in mind what the purpose of a pension is, at least as I see it, and I have not heard that discussed today. Essentially, I believe the purpose of an employer pension is to ensure maximum employee loyalty at minimum cost and still retain the freedom to dispose of the employee, if necessary. I do not think the employer pension has any more purpose than that.

There are a lot of myths that abound about what it is or what it is not and what I am going to talk to you next is what it is not. I do not believe it is concerned with employees' retirement financial needs. When employers discuss their pension plans with employees, they discuss the plan and then they usually advocate that the employees ensure they are responsible for their retirement income. Self-reliance is advocated quite often when pension plans are presented to employees.

An employer pension plan is not meant to address any social objectives; that is, poverty in old age. Just the way it works, it is not meant to address that.

It is certainly not voluntary. A little while ago, I sent a letter to Mr. Kwinter encouraging him on pension reform. In his reply to me, he discussed the voluntary pension system. That was a little bit of news to me, because if you are an employee and your employer has a pension plan, you are in it as a condition of employment. From the employee's point of view, the pension plan is not voluntary. You may not be in it until some minimum period passes, but essentially, if the employer has a plan and you meet the condition that is defined in the plan, you are in the plan.

It is certainly not a reward for long service, at least the way I have seen it, although it is often touted as such. Particularly when employees question some of the things that happen if they leave before their retirement,

an employer insists that it is a reward for long service. I might ask you: For all those employees with very long service who have been laid off over the past few years and were given arbitrary settlements for pensions, where did their reward for long service go?

I think the key thing to bear in mind is that these are some of the things the current employer pension system does not really address and it is really not meant to address them either.

I am sure you are all aware of what some of the problems with the current pension system are. I will just briefly go over them. We have heard about one this afternoon, and that is the employer earnings-stripping. As an employee, I really view my pension as deferred wages or deferred income, so whether the employer contributes totally or I contribute part and the employee contributes part, I think I should be the beneficiary of any increased earning in the pension plan.

Stealing from the unemployed: I think Conrad Black has very clearly brought this to the forefront. One thing he should be commended for is making the public widely aware of the problem, if nothing else.

Stealing from widows: The way pension plans are often worded is that if the surviving spouse remarries, the pension is terminated. If you look at the history of employment in Ontario over the past 50 years, typically what you have is a male who is the income earner and the woman stayed at home and looked after the family, so primarily the people affected in old age are going to be widows of the pensioners. For whatever reason they want to seek comfort in their old age through marriage, they always have to think about whether they are going to be able to live after that. In a sense, the way a lot of pension plans are worded is really a form of discrimination against women.

Arbitrary reduction or termination of benefits: You may have read a few years ago about the new hotshot president of a trust company. He decided to improve the bottom line and simply declared reduced benefits to existing pensioners. That person was very surprised to find out about grey power. I am very surprised Michael Wilson did not learn a lesson from that when he tried to mug granny and grandad shortly after that.

Portability: The current pension system, from where I can see, an employee's perspective, basically has no portability. If you leave the employer, that is it. You often lose most of the pension.

Long vesting periods: It is usually 10 years, and I understand that is what the current legislation addresses. But even if you are vested and you have not reached retirement age, you usually get a low, arbitrary amount if you leave. What the employer says is: "Here, insurance company, here is \$50. Forty years from now, buy the employee a cup of coffee once a month." The result of all that, I suspect, is a lot of pensioners who are on public welfare simply because the private pension system has let them down.

If you look at all these things from a pension manager's point of view, they are all considered good because they reduce the liabilities of the pension fund, but I am very pleased to see that a lot of them have been addressed in Bill 170.

As I see it, the current employer pension system is really a system from another age, an age when employees worked for one employer all their working lives, an age when unemployment was relatively low, when inflation rates were

relatively low, when there were not the dramatic changes in the work force caused by rapid technological obsolescence that we are getting these days and when there was not a high proportion of the work force engaged in part-time or temporary employment.

From an employee's point of view, if I were to look at what the ideal might be, I would really have to say that I would like to see all employer pension plans eliminated and replaced with a combination of an expanded Canada pension plan and individual savings, which are advocated by employers anyway. That is an ideal. I am a pragmatist. I realize the pressures in our society these days would probably make this kind of system a long time coming, but that is the ideal I would see as an employee.

If we do not have this, then what can we do? I see that your work on Bill 170 is important because if we have to have employer pensions, I would support Bill 170, and I encourage you to proceed as rapidly as you can and as rapidly as prudently possible. However, when I read over the bill as an employee, I thought some things in it perhaps needed addressing.

The key thing--and some of the speakers have also talked about it today--is pension ownership. In Bill 170, the ownership of the pension is really not defined, at least not that I could see. My assumption would be that by default it goes to the employer, and I disagree with that. I believe the employee must own the rights to the pension. The employee must have the rights to all his or her contributions, all the interest on his or her contributions, all the employer contributions made on his or her behalf, all interest on the employer contributions made on his or her behalf, and the employee must fully own the rights to the prescribed retirement savings arrangements.

When I read the bill, "prescribed" said "defined by the regulations," so I am not totally certain what it means, but I assume it means it is the equivalent of a locked-in registered retirement savings plan; that is, it cannot be withdrawn until the employee declares he is retired. That is my assumption of what it means, and I hope that is what you understand it to be. As I see it, I would like to see the rights of the employee to ownership established in the bill.

Surplus earnings: We have heard a lot of discussion about that. If the employee has rights to the pension, then the employee should have the rights to the surplus earnings of that employee's portion of the pension. If the employee is terminated or the pension is wound up, then all the interest should go to the employee as defined in the bill.

Again, it was mentioned here today there was another task force looking at how you would cover inflation protection, and I do not propose to address the mechanism. All I am saying is that I would like to see the bill make sure the employees own it.

Having seen in the electronic and printed media all the pressures against inflation protection, I see a lot of difficulty perhaps implementing it. You have probably heard that it is too expensive for employers. It is likely going to make them noncompetitive. Perhaps it is going to interfere with the free enterprise system. I certainly have nothing against the free enterprise system. The only problem I have is that the employees do not get to participate in it.

What you might want to consider is the suggestion I make: a free enterprise alternative. If you cannot come to some agreement on how the

inflation protection formula be developed, then I suggest an alternative. The employee has a choice of either going into the employer plan or taking an alternative. The alternative basically says the employer's portion of the annual contribution and the employee portion of the annual contribution go directly to the prescribed pension savings arrangement and the employees have the control over it.

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For example, if I were to contribute \$100 a year to the pension plan and the employer were to contribute \$100 a year to the pension plan, at the end of the year, \$200 plus the accrued interest for the year would go directly to the prescribed retirement savings arrangement. It is like a locked-in RRSP. If the inflation protection mechanism cannot be developed, I see that as the only fair way for employees to exercise some control over their retirement income.

There are a number of other areas of the bill that I think need addressing.

Bankruptcy: For the purpose of the pension plan, if the company goes bankrupt, immediately prior to the bankruptcy the employees should be considered terminated. In that way, no part of the pension fund or accrued interest could be part of the creditor proceedings of bankruptcy, because basically the pension plan is not the employer's; it should be the employees', and the employees' rights to it should be asserted. This ensures that the employee is fully protected in these circumstances.

Another thing that does not seem to be addressed in the legislation is what I call self-dealing. Basically, what I want to see is that the pension fund be kept at arm's length from the employer; that is, it should be treated as a separate entity, accounted for separately and be visible, if you like.

Another thing I suggest is that no employer securities be in the pension fund because my understanding is that there have been some problems in the past where, for instance, municipalities have made the pension fund consist of low-interest municipal bonds or an employer simply put its stock into the pension plan. What happens when the employer's stock is in the pension plan is that if the company goes bankrupt, the employees have nothing and the guarantee fund has to pay it. You might want to consider some of the rules for self-dealing to ensure that the employees are protected.

Corporate takeovers: As with a bankruptcy, I think the employees should be considered terminated immediately prior to a corporate takeover. What we have seen in the last few years, particularly with these people called greenmailers, is that the pension fund quite often makes a company an attractive takeover target, and quite often, at least to my understanding--it may not be often--sometimes the pension fund is actually used to help finance the takeover, and I definitely believe that is wrong.

Another problem I see is a company with an underfunded pension plan taking over another company with a very richly funded pension plan and then averaging the results to cover the underfunding. I would like to see that stopped.

The other thing that can happen is the pension reduction hiding. You are probably aware that last year General Motors bought a corporation called Electronic Data Systems, which is a data processing company. The data processing employees of General Motors were transferred to that company and a

lot of problems ensued because General Motors was considered to have a very good pension plan and Electronic Data Systems was considered to have a not-so-good pension plan. There were a lot of threatened lawsuits before, I understand, a cash settlement was arranged with all the employees.

If an employee is terminated, the legislation as written in Bill 170 gives the employee the opportunity to take the pension money and transfer it either to the new employer or to the prescribed retirement savings arrangement, and I see no reason that should not be in effect at corporate takeover. If a company is taken over, the employees would then have the choice; they could either go with the new company's pension plan or go with the prescribed pension savings arrangement and then start from zero with the new company pension plan. I think it is important that you consider that.

The last item I want to discuss today is the funding basis. My understanding is that Bill 170 calls for disclosure to employees of what their assets of the pension are, but one of the problems I find when I talk to other employees, my neighbours and other people is that employees really are not sure what the pension fund is. Does it exist? What is it? How is it managed? Where is it kept? So in addition to the disclosure called for in this bill, I suggest that there be an additional piece of information; that is, the status of the total pension fund: where the funds are invested--for instance, are they invested in South Africa?--what types of securities are held, who manages the fund, what is the investment performance--that basically says how competent are the managers--and what are the management fees. I think the superintendent of the pension plans would be interested in that because one of the things that person would want to ensure is that management fees were not a vehicle for sucking excess funds out of the pension.

That brings me to the end of the presentation. What I have done is to tell you what my interest is in the bill, what I see as the purpose of employer pensions, what employer pensions are not, some of the problems that have come about because of the current system of employer pensions, what I think the ideal is and what I think you can do to improve Bill 170.

In conclusion, I think Bill 170 is long overdue. I encourage you to proceed, but I want to ensure that you reflect employees.

The Vice-Chairman: Thank you. We have at least one member who wants to ask you a question, if you do not mind.

Mr. Lane: It is really not a question; it is just a comment.

I would like to congratulate you on the way you have put your brief together and the way you explained it. At the end of a long day, it is nice to have a brief we can follow, and I think you have done an exceptionally good job of putting it together and an exceptionally good job of explaining it. Thank you very much.

Mr. Rogers: Thank you for your time.

The committee adjourned at 4:47 p.m.

STANDING COMMITTEE ON GENERAL GOVERNMENT

PENSION BENEFITS ACT

WEDNESDAY, APRIL 15, 1987

Morning Sitting



STANDING COMMITTEE ON GENERAL GOVERNMENT

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Davis, W. C. (Scarborough Centre PC) for Mr. Sheppard

Polsinelli, C. (Yorkview L) for Mr. Offer

Clerk: Deller, D.

Staff:

Anderson, A., Research Officer, Legislative Research Service

Kaye, P., Research Officer, Legislative Research Service

Witnesses:

From the Ford Motor Co. of Canada, Ltd.:

Rehor, D. G., Treasurer

King, J. S., Manager, Pension and Employee Insurance

Pygiel, L. F., Acturial Consultant, GBB Associates Ltd.

From the Canadian Auto Workers:

Nickerson, R., Secretary-Treasurer

Gill, S., National Representative, Research Department

Wohlfarth, T., National Representative, Research Department

From the Business and Professional Women's Clubs of Ontario:

Neville, E., President

Lohnes, C.

McDonald, K.

Mackey, N.

From the Ministry of Financial Institutions:

Offer, S., Parliamentary Assistant to the Minister of Consumer and Commercial Relations (Mississauga North L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday, April 15, 1987

The committee met at 10:02 a.m. in room 228.

PENSION BENEFITS ACT
(continued)

Consideration of Bill 170, An Act to revise the Pension Benefits Act.

Mr. Chairman: The first presentation is from the Ford Motor Co.: Mr. Rehor, Mr. King, Mr. Bedard and Mr. Pygiel. I am not sure who the spokesperson is to start.

Mr. McClellan: I do not think we have the documents yet.

Mr. Chairman: We have not started yet, either. Please go ahead, gentlemen.

FORD MOTOR CO. OF CANADA, LTD.

Mr. Rehor: The Ford Motor Co. of Canada is pleased to have the opportunity to appear before this committee to present its views regarding proposed and planned revisions to the Pension Benefits Act of Ontario.

Our company has had pension plans for its employees since 1950. At the present time, the plans cover over 17,000 active employees and over 6,000 retirees, deferred vested plan members and survivors receiving pension benefits. In 1986, benefit payments totalled over \$50 million.

Our plans are defined benefit plans. The unionized employees and retirees, about 19,000, are covered by flat-benefit, noncontributory plans. Our nonunionized salaried employees and retirees, about 4,000 people, are covered by a final average plan which is partially contributory. All our plans have early retirement provisions and, where eligible, provide supplementary benefits upon retirement at any age prior to eligibility for government benefits. The market value of our pension assets is over \$1 billion; or maybe after yesterday, not quite.

In our minds, pension reform is overdue. We have supported many of the basics, such as portability, earlier vesting and survivor benefits. Unfortunately, we believe that the incremental costs and administrative requirements associated with Bill 170, the suggested surplus withdrawal restrictions and especially the announced commitment to provide inflation protection will discourage many employers from establishing and maintaining pension plans for their employees.

Please consider with me the following items: Pension plans are, at this time, voluntary. Employers without plans are unaffected by this legislation. Only 38 per cent of this province's workers are members of private pensions. Of those covered, it has been estimated that over 90 per cent are covered by defined benefit plans. Defined benefit plans are considered to be the best type of plan for most employees. Bill 170 imposes the most significant costs and administrative requirements on sponsors of defined benefit plans. The

surplus withdrawal issue affects only defined benefit plans. Inflation protection appears to be directed only at defined benefit plans.

We believe that employers without plans, who are the majority of the province's employers, would be ill advised to consider establishing a defined benefit plan. Further, we believe that sponsors of defined benefit plans, such as ours, must consider seriously the wisdom of maintaining those plans, especially with the spectre of inflation protection legislation looming in the background.

In an industry as competitive as ours, we simply cannot afford the uncertainties and open-ended liabilities that inflation protection will bring. We have an excellent record regarding ad hoc adjustments to our pensioners, but these have been provided as a part of the collective bargaining process, and based on the economic realities of the times.

Exhibits I and II attached to this presentation provide perspective on how our hourly pension plan improvements have compared with inflation, for both active plan members and retirees. With the chairman's indulgence, I would like to ask Jim King to take you through exhibits I and II so there is an understanding of the material.

Mr. King: If you turn to exhibit I, this shows what the improvements have been to the retirees. I will walk you through the schedule. It goes from 1962 through to 1987. The second column shows the benefit per month, per year of service at retirement.

For example, in 1962, it was \$2.80 when that individual retired. As of January 1987, the next column, that is now \$14.90. The increase through to 1987 is 432 per cent compared to inflation of 325 per cent during that period. So those individuals have fared better than inflation by 133 per cent. The table does the same thing for each of the years through to 1987, showing what the benefit was at the point of retirement, what the benefit rate is in effect, and comparing that with inflation.

I should point out that the early years, particularly from the early 1960s to the late 1960s, are influenced by the wage parity agreement that was subsequently negotiated in the late 1960s. That resulted in those people getting substantially better improvements when the auto pact came into effect in the late 1960s.

You can see, starting in the 1970s and into the 1980s, that, in general, the ad hocs have averaged in the 50 per cent to 60 per cent range. Some years have varied, obviously, because of the economic circumstances of the company.

Exhibit II does the same thing in reverse order, but it talks about future retirees. Again, the first column starts off with the consumer price index, where 1981 equals 100, and then talks about the cumulative increase in CPI going back to 1962, shows for one of our codes--code A in this case--what the benefit level is for 1987, and takes it back to 1962, when it was \$2.80. Then again, it compares the increases to the active employees during that period. You can see that the trend has been pretty well 100 per cent of inflation, with some obvious exceptions in some of the more difficult years--let us say in 1980, 1981 and 1982--where it fell behind inflation, but has been picked back up since.

Mr. Pehor: The balance of the presentation will provide a more detailed perspective of our concerns, starting with inflation protection.

In the report of the Royal Commission on the Status of Pensions in Ontario, the general conclusions included the following statement:

"The commission supports indexing as it currently exists in government social security income programs....It cautions, however, against the view that all retirement income must be indexed--particularly if any degree of compulsion is to be placed on the sponsors of employment pension plans to provide indexed benefits, with or without government assistance. Again, these pension plans cover only a segment of the population. Any government intervention should be on a universal basis."

We believe this statement is as valid today as it was when the commission tabled its report after four years of considerable review. Governments should be concerned with ensuring that retirement incomes should not fall below a specific minimum level. Pensions beyond that level should be subject to competitive realities, and where unions are involved, the collective bargaining process.

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Because inflation protection affects only defined benefit plans, which cover about 35 per cent of the province's workers, it discriminates against the employers with the best plans. It imposes the greatest costs on the best plans and imposes no cost on those without plans or those with defined contribution plans and will provide an incentive for employers to move away from the best type of plan for employees.

Based on estimates provided by our actuary, our 1986 pension costs would have been about \$50 million higher, assuming a long-term average CPI of about five per cent and that full inflation protection was in effect for our active employees and all our retirees. If indexing were required at 60 per cent, the costs would have been about \$25 million at a five per cent average CPI rate.

The actuary also reviewed the incremental cost impact for providing full or partial indexing for all our retirees during the 1977 to 1986 period. That review indicated that costs would have been over \$70 million higher for the 10 years with full inflation protection at actual experience and about \$30 million at 60 per cent of actual CPI. These costs reflect only the actual annual experience, without including the costs associated with expected future inflation.

Income before taxes for our Canadian operations totalled \$435 million for the 10 years ended December 31, 1986, or an average of \$44 million a year. Clearly, full inflation protection would have put Ford of Canada out of business.

This is a very important point to think about. While we would acknowledge that because of the way pension accounting takes place, the incidence of inflation indexing would create a significant front-end load to the cost impact and that in later years it would be diminished, the big problem, as we see it, is that in our industry in particular, facing the considerable amount of comparative pressure that it is, with a 10-year wait for the situation to right itself, we may not be around for the payoff.

You have a classic case of our average earnings during a difficult and tumultuous period for our company and this industry--and we are certainly not out of the woods--where the front-loaded impact of this proposal, admittedly in its extreme, would have literally driven us from a modestly profitable position to a loss for the full 10-year period.

As a result of that, it is difficult to envision the continuation of our operations in Canada during that time period. You can only evaluate the prospects for doing business in a particular place in the circumstances that exist at the time. None of us have perfect knowledge. If we did, none of us would have to be at these hearings today.

Although we prefer to stay with the defined benefit approach, we can assure you that we are already looking at alternatives. It should be recognized that because of certain provisions of our plan, such as our 30-and-out provision, we would be faced with providing indexed pensions to employees retiring at age 50 or earlier for 30 or 40 years. Under these conditions, we would be exposed to costs that are neither predictable nor controllable. This is a situation we must avoid.

The announced intention to require mandatory inflation protection for pensions has created a potentially serious problem for employers, such as ourselves, whose collective agreements expire this year. In our industry, the influx of foreign competitors establishing assembly plants in Canada will result in an overcapacity situation that will result in a loss of jobs. These new assemblers have a competitive advantage because most of their parts and components are sourced from their lower-cost home countries. They also benefit from modern collective agreements and young work forces. The potential for lost jobs is therefore greatest for the traditional domestic assemblers.

Also, to the extent that pension plans are provided, we expect that these new companies will have defined contribution plans rather than defined benefit plans. We expect the Canadian Auto Workers will have pensions as a high-priority negotiations issue to encourage early retirement of older workers. Unfortunately, with our mature work force, the near-term incremental costs associated with inflation protection would put us at a further disadvantage vis-à-vis foreign competition. We are already struggling to hold current production levels. In that context, we will have to resist pension plan improvements during the contract negotiations, given the uncertainty of the inflation protection issue.

It must be recognized that governments and regulated corporations, such as utilities, are able, because of taxing and rate-setting powers, to generate the revenues necessary to meet their obligations. Canadian private sector corporations, however, must rely on their ability to sell their products in competitive markets to meet pension obligations from current revenues. Exhibit III, incidentally, is a copy of a letter on the issue of competitiveness sent to David Peterson by our president Mr. Harrigan.

The next issue we would like to address is the one of surplus withdrawals. By the way, I would like to preface my comments about surplus withdrawals by telling you that we are not in a position where we are waiting in the wings for this to be clarified so we can stand in line to make a withdrawal. We have had no applications. We are not in a kind of a surplus position that we would be interested in one, but we are very concerned about the principles and the flexibility. We do not have an axe to grind in the near term for ourselves.

The funding and asset management decisions required in the responsible management of defined benefit plans are extremely complex and fraught with risks and uncertainties. Sponsors of these plans have recognized and accepted that funding assumptions or investment results that produce shortfalls are their responsibility. They have been willing to accept that risk on the understanding that they would benefit from surpluses that developed. Now,

certain groups in the government are proposing that sponsors retain responsibility for losses but not be allowed to benefit from surpluses. That, to us, plainly and simply seems inequitable.

We believe further restrictions on surplus withdrawals will result in at least three types of actions, all of which will weaken the financial strength of pension plans:

1. Some sponsors will switch to defined contribution plans which will effectively transfer the risk to the employee.

By the way, I should mention that one of the members of the House yesterday was citing an example, which I am sure we would all be very sympathetic with, if we had it in our own families, where a pension granted in 1950 for \$100 a month remained the same throughout the lifetime of the retiree. The problem with this legislation is that it does not address that problem.

If the incentives had been in place in 1950 favouring defined contribution plans instead of defined benefit plans, an annuity bought in 1950 when the man retired, given the very low rates of interest that existed in the marketplace at that time, the kind of annuity that gentleman could have purchased could well have given him only \$100 in perpetuity. This legislation is not addressing that issue, only defined benefit plans. So the example that gentleman finds so personally disturbing--and we would all under like circumstances find disturbing--is not addressed by this legislation.

2. Those who stay in defined benefit plans will minimize annual funding to avoid surpluses.

3. Some will switch from active to passive management and may reduce investments in equity markets which will have a negative impact on future job creation.

One thought that occurred to us this morning at breakfast was that it was curious that a country like the United Kingdom would impose a penalty on surpluses to force surpluses out of nontaxable pension funds back into the arena of taxable income-earning asset creation, whereas seemingly in Canada we are headed in the opposite direction. We want to drive more money out of the taxable income-producing sector into the tax-free sector and thereby further reduce the flexibility of government to raise revenue. I find an interesting contrast between the two approaches.

Consider the risks and uncertainties we are faced with in funding our plans: We have over 23,000 members in our plans. Some will quit before vesting and some will die before retirement. Age varies substantially and service varies substantially. Some will retire early, some will retire at 65 and some will retire after 65. Some will develop disabilities and retire early. Some will die soon after retirement, but benefits could be payable to a survivor for years. Some will live well into their 90s. We are exposed to a constant barrage of rule changes and, worse yet, rule uncertainties. We must select an appropriate interest income assumption. Benefit improvements will be negotiated. We are exposed to the vagaries of the bond and equity market.

Wrong assumptions regarding any of the above can generate gains or losses. Once the funds are in the trust, we are responsible for investment and

asset mix decisions. Those decisions can have a tremendous impact on the fund's investment results compared with the actuarial interest rate assumption. Clearly, as a sponsor, we are at considerable risk. If there is no incentive for us to take the risks necessary to achieve above-average results and reduce costs, why should we bother?

There are several other points that must be considered in this surplus debate. One major factor is the recent strength of capital markets, where both equities and fixed-income investment performance have been very strong, until the last couple of days. We submit that this is unusual and is unlikely to continue on an uninterrupted basis.

In the early 1980s, for example, when the economy and many businesses, including ourselves, were in deep trouble, there was great concern about unfunded liability. Because of bankruptcy concerns, the government established the pension benefit guarantee fund, which assesses premiums based on unfunded liability. This certainly encouraged faster funding; in fact, we suggest that governments have always encouraged maximum rather than minimum funding.

In our case, we made substantial prepayments in the late 1960s and the early 1970s, and at least once in the 1980s we had to accelerate funding because of experienced losses. Is it really fair to say we have no right to any of those assets, particularly based on the effort we have made in terms of our management of these funds? Have those accelerated payments not generated a larger asset base? Do you really think we would ever do it again if governments say we have no claim on surpluses that develop as a result of such actions? We would like to believe that governments should continue to provide incentives to have these plans better funded and incentives for the creation of new defined benefit plans rather than to create an environment where the incentive exists to underfund the present plans and clearly discourage the formation of new plans.

One final point on this issue: We suggest that if precise funding requirements were known along with future investment returns, the point I made earlier, we probably would not be here discussing this issue.

The next section is on administrative issues, and as our material indicates, there are a number of areas that concern us, but in the interest of time, I will leave those with you and move on to our summary.

In summary, we believe the government must reassess its position on the inflation protection and surplus issues. Administrative complexities already make defined benefit plans unattractive to many sponsors. That is unfortunate, given that this is considered to be the best type of plan for most employees.

Regarding inflation protection, we believe that government intervention, to the extent it is perceived necessary, must be on a universal basis and directed only at a specific minimum acceptable level of retirement income. Pensions above that level must be left to the competitive realities of the employers involved and/or the collective bargaining process.

On the surplus issue, we believe the present rules that permit withdrawals only for assets in excess of 125 per cent of liabilities provide adequate protection to plan members. Sponsors must not be discouraged from funding faster and must have some opportunity to reduce their costs, given the significant risks and uncertainties they face in meeting their promised commitments.

The government's primary objectives should be to maintain and expand the private pension system and, in particular, defined benefit plans. Proceeding with inflation protection, the imposition of further restrictions of surplus withdrawals and the additional administrative burden will, in our opinion, make those objectives impossible to meet. In fact, we suggest they will do the exact opposite.

Mr. Chairman: Thank you. Mr. McClellan has a question.

Mr. McClellan: On page 4 you indicated your 10-year total before-taxes income. During that period, on average or on an annual basis or on whatever data you have, how much of your contributions to the pension fund was written off as nontaxable business expenses?

Mr. Rehor: To the extent that they were taxable in any of those years, there was a tax-deductible expense.

Mr. McClellan: Do you have the data that you can make available to us?

Mr. King: Not with us.

Mr. Rehor: Not on a specific basis. In the 10-year period, we were in a loss position for four of the six years and, of course, there is a cumulative effect of those losses carried forward; so it would impact more than just the four years. The specific answer to your question is no. We could provide the data at a later date.

Mr. McClellan: You can?

Mr. Rehor: Sure.

Mr. McClellan: Thank you. That would be helpful. One of our difficulties here of which you are not aware is that we have virtually no data at all from the Pension Commission of Ontario or from the ministry. We do not have any information on the amount of surplus accounts or any history of the relationship between surplus and deficit over the last 10 or 20 years, which makes things difficult. So any data on your own historical experience that you can provide to us is very much appreciated. We would especially appreciate receiving--

Mr. Rehor: It is particularly relevant too. Yours is an excellent question, because when you do have the data in front of you, you will see that if you were to overlay our concern, particularly over these loss years--it is no secret that the North American automobile industry was struggling mightily in the 1980-1982 period and is still struggling in varying degrees. We are hardly fully competitive with our highest-quality, least-cost competitors worldwide. We have made a lot of progress, but we are not there yet.

If you were to overlay on these results the kinds of data we are talking about, that is the context in which people would have made decisions, not in some future: "Gee, in 10 years all of this will get worked out in the wash. Yes, there is the present value of money and all that, and that is a problem, but...." The problem with business decisions in terms of the realities of competing in a particular market or producing in a particular nation is the environment that exists within the immediate one or two years that surround the decision-making process.

You certainly have to look at the long term, but if your back is against the wall financially, no bank in the world could, would or should overlend you money. The fact that 10 years down the road your pension costs are going to get better because this was of front-end loaded liabilities that this proposal might bring will in fact diminish; could you borrow against that? Would the government be willing to lend money to private enterprise to overcome that bulge that it has to swallow?

That is a very relevant question, I think, particularly in the specifics of our industry, our company, in this nation in that time period. We are not talking prospectively, pie in the sky, "Maybe we will be," "Accept this assumption, please," or "Accept that assumption, please." Those are the facts: actual consumer price index, actual pension results, actual profitability. I suggest, gentlemen, that Ford of Canada might not be in this province had this thing been in place at that time.

Mr. McClellan: Again, now we are into the economic Armageddon scenario that General Motors shared with us the other day.

Mr. Rehor: No. We are not. I have a little bit of a problem, because that is future talk. I am talking actual inflation results, actual pension experience, actual profitability and actual conditions that existed in the industry in terms of our financial health and our perspectives. That is a little bit different than saying, "Chicken Little, the sky is going to fall in."

We lived it. It was real. The Canadian Auto Workers lived it. They lost the membership. The United Auto Workers in the United States were all part of a common market and a common production base. That was real, and the process is going on. To the extent that General Motors does talk about the future and the threat of the transplants coming into this marketplace without pension plans, there is no guarantee the CAW is going to organize the Japanese assemblers. I am sure that is their desire, but the Japanese have demonstrated in the United States a very skilful ability to stay nonunionized and many of them without pension plans. We have to compete against that.

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Mr. McClellan: Without expanding the Chicken Little scenario, can you tell me whether and on what occasions you have had a deficit in your own pension fund within the last 15 years?

Mr. King: It was in the early 1980s. Leo Pygiel is our actuary. I think it was the year when market returns on average within the total fund were negative 1.5 per cent within the PFA universe.

Mr. Rehor: That is absolute negative, much more negative in real terms.

Mr. King: Right; and versus our actuarial assumption it generated a loss. Of course, losses have to be funded faster, and they were funded over a five-year period.

Mr. McClellan: What amount of money are we talking about?

Mr. King: I would have to get that for you. I think we are probably talking somewhere in the \$5 million to \$10 million range.

Mr. Pygiel: Sure, it would be within \$5 million to \$10 million.

Mr. McClellan: Is it fair to say that kind of expenditure would be money that would be otherwise unavailable for the bargaining table? Is that not a fair thing to say?

Mr. King: No, I do not think so.

Mr. McClellan: We will see what the next deputation thinks about it. You are saying that item was not raised during the negotiations?

Mr. King: At that particular time in the early 1980s? No, it would not have been.

Mr. McClellan: Or factored into your considerations of--

Mr. Rehor: If what you are driving at is if the pension fund is in trouble in terms of results and whether that is reflected in a concession in the bargaining process, the answer is no.

Mr. McClellan: You are saying that it does not go into your pre-bargaining decision-making--

Mr. Rehor: The union does not share with us the trials and tribulations of pension fund problems. They are very interested in the health of the pension fund, but please, they are not going to say: "Gee whiz, you had a bad year last year. We will ask for less." I believe they will confirm that is their posture as well. It is a little naïve to suggest they would. That is not human nature.

Mr. McClellan: We have heard a number of people, including the president of the Ontario Federation of Labour, who comes from the CAW, indicate that money that goes into the actuarial requirements of pension funds is money that is taken off the bargaining table--

Mr. Rehor: No.

Mr. McClellan: --money that might otherwise would be available for other parts of the compensation package.

Mr. Rehor: It does, but in fairness, I will say to you that the economic health of our company and the economic health of our industry--does that enter into the bargaining discussion in terms of what we are going to do on ad hoc pension adjustments, yes, sir, absolutely; but that is independent of the funding status of the pension fund.

Mr. McClellan: Just one final question. I gather that Mr. Grossman, whose family pension you were discussing earlier, I guess, since it is written up in today's Toronto Star, also made a statement of principle that, I assume, you disagree with. What he said is quoted, "The principle behind" mandatory indexation "is that it is not an added cost, but it is ensuring that profits earned on the deferred income of retired employees is given to them as opposed to being given to current employees." Perhaps one can quibble with the final part of the formulation, but what he is talking about and what the government of Ontario is talking about when he was Treasurer was using the earnings on pension funds over time to provide inflation protection. I do not think we are talking about various--

Mr. Rehor: I prefaced my comments on the issue of surplus withdrawal by suggesting to you that we ourselves are not seeking a surplus withdrawal. So the principle that is suggested there, yes, I do not agree with it, because it simply does not apply to us. The facts do not fit.

Mr. McClellan: You have expressed a concern about front-end loading of a burden.

Mr. Rehor: That is right.

Mr. McClellan: I am not sure whether you are objecting in principle to the notion that earnings on pension accounts in excess of a rate of return ought to be used for inflation protection.

Mr. Rehor: No, because I am not clever or bright enough to figure out across the board for all employers under all circumstances that, in fact, that is attributable to a particular set of causal factors. I am not sure the incentives for good investment performance lie in that kind of altruistic rationale. If there is not some incentive to maintain superior investment performance, wherein the people providing the resources and having the responsibility to perform those jobs are able to enjoy at least some benefit from that--I think it is Utopian thinking that they would do it all for the greater good.

Mr. McClellan: If I followed the logic of that it would mean that if I played the stock market and I went to my broker and he did well, he would insist on keeping part of my property.

Mr. Rehor: And he does.

Mr. McClellan: He keeps a fee or a percentage and he has an incentive bonus built in.

Mr. Rehor: He prospers because you prosper.

Mr. McClellan: But he does not keep my property. He does not say that what is mine is now not mine, it is his, and that is what happens to pension accounts.

Mr. Rehor: That is appropriated. In a defined contribution environment, I agree with you 100 per cent: that is his property and whether or not the employees would want him to manage their money under the defined contribution plan is basically the decision of the employees. We are not talking about that. We do not have defined benefit plans.

Mr. McClellan: We agree to disagree.

Mr. Guindon: At the beginning of your remarks when you mentioned the market value of pension assets, you said there is more than \$1 billion, but then you went off the written remarks and mentioned, "maybe not after yesterday." Could you explain what you meant by that?

Mr. Rehor: Later on in the text we talk about the vagaries of the financial markets and the fact that the performance in general among all Ontario pension funds that have been invested in either the fixed income or the equity market, or both, in recent years has been very good, but the last couple of days are a classic example of why you must not take that to the bank for all time and for ever and assume it will continue uninterrupted. They are

markets. They are driven by supply and demand. Clearly, there has been an interruption in demand relative to supply, and the values have fallen significantly in a very short period of time.

Part of the premise associated with the argument about surpluses is that this situation has somehow become institutionalized, that good performance--that is, real rates of return in excess of inflation--will be perpetuated for the reasonably foreseeable future. The last several days demonstrate how frail the concept can be, because it is beyond our collective control. That is what I meant by that. In other words, if we had a one per cent movement in the market--and lately, the markets have been so volatile, we could have a one per cent swing. That is \$100 million. Things can change quite quickly. I could say it is \$1 billion today, but maybe tomorrow I would have to say it is \$900 million, depending on the market.

Mr. Chairman: Thank you.

The next presentation is from the Canadian Auto Workers. We have Mr. Nickerson. Probably you will introduce the others with you.

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CANADIAN AUTO WORKERS

Mr. Nickerson: My name is Bob Nickerson. I am the secretary-treasurer of the Canadian Auto Workers. With me today on my right is Tony Wohlfarth, and on my left is Sym Gill who assists us in our research department at the Canadian Auto Workers. The Canadian Auto Workers welcomes this opportunity to present our views on Bill 170. I assume everybody has a copy of the brief.

Mr. Chairman: Yes, we do.

Mr. Nickerson: The Canadian Auto Workers currently represents approximately 158,000 workers in plants and offices throughout Canada. The majority of our members work in the auto, aerospace and telecommunications industries. Others work in such diverse areas as agricultural implements, mass transit, food processing, airlines and construction equipment. Over 127,000 of our members work in Ontario.

I do not intend reading the total brief. We have put the brief together and I am going to touch on it as I go through our remarks related to the changes in Bill 170.

I bring your attention to the bottom of the page. In the very early days, in 1950, our demand was, very simply, \$100 a month to allow an auto worker to retire. In the United States, this demand was met by topping up social security benefits, but in Canada at that time we had an old age security benefit worth only \$20 per month, payable at age 70. The issue was resolved when the federal government agreed to increase the OAS to \$40 per month in 1952 and the companies agreed to top it up.

I bring that to your attention because, from the previous presentation, you would think that in fact it was the Ford Motor Co. that established the pension plans. They came in kicking and screaming at the time we had to establish pension plans in the early days under the collective-bargaining process.

On page 2, there are four fundamental requirements for an adequate pension system: First, there must be adequate coverage so that workers who live off wages while working will be able to retire with adequate pensions; second, adequate income floors; third, a relationship between pre-retirement and post-retirement income; and fourth, protection against erosion from inflation.

We in the Canadian Auto Workers of course have continued to pursue and request, through every conference we have attended on pensions and through every presentation we have made to the federal and provincial governments, expansion of the universal Canada pension plan and Quebec pension plan and the federal social security plan. We think this is the area that should be under consideration because it covers all the key elements where persons move from job to job, where persons have income, where persons have the protection because it is universal.

Based on the fact that we are not now looking at that, but are really looking at the possibility of a change based on the amendments to Bill 170, we are proposing to deal with those changes, although we still feel very strongly that a universal plan should be in place.

On page 3, it is important that we make the very strong point in the third paragraph from the bottom that, "We are most mindful of the fact that workers and taxpayers through their contributions, through deferred wages...." I do not think there is any question today--we have made this point a number of times throughout our brief--that the whole process of putting into place a pension plan is deferred wages. Those wages that workers would receive normally in their paychecks are going into a plan; that is, wages they could have coming in on a weekly basis if they were not going into the pension plan.

Very simply, an example of that is we have a situation where General Motors made a presentation. In 1979, we sat down at the bargaining table. When Ford Motor Co. tells us they do not tell us there is a deficiency in the pension plan, that is wrong; they do. They certainly bring it to our attention and they make sure that we clearly understand there is a serious problem with trying to negotiate pensions. In 1982, which Ford just previously mentioned, there was no increase in pensions--absolutely none--for active and/or retirees because of the deficiency in the plan and because of the situation in the bargaining with the corporation.

In 1979, General Motors had quoted the pension costs at \$1.56 an hour. When you start putting penny costs to the plan, you know you are talking about an hourly rate; therefore, you are talking about the deferred wages. I notice they did the same thing in their presentation, and they arrived at their \$8 million to the virtue of six cents an hour as a cost to the corporation. I am sure that this corporation and every other corporation that is making a presentation to the committee are making the point of their higher competitive and labour costs. That is the total hourly cost.

In 1986, the cost to General Motors was 40 cents an hour for pension costs. Somebody must tell us where the \$1.16 has disappeared to. That is the cost the company was putting in in 1979. There are variant costs, and we recognize that, but in fact they are costs and they are wages.

On the need for inflation protection, because of the support of the government, now corrected by the minister, I understand, who as recently as Monday said the government is a part of it and in favour of it--maybe the minister himself may not be but the Conservatives and the New Democrats are

in favour of it--we think this committee should put in place a provision under Bill 170 that will allow the task force that is looking at how to bring in inflation protection to allow for inflation protection to be put in place, once it has arrived at the determination of how to formulate the cost or the approach for it. In fact, retirees in this province are long overdue for that kind of protection.

The kinds of overtures that are being made by a number of the industries would give us the indication, I suppose, when looking at good times--when this year Ford Motor Co. made more money than General Motors, when General Motors paid \$169 million in bonuses to its executives, when Ford Motor Co. paid \$167 million to its executives, and when there were bad times, when there were times when we had to compete--it appears to me they are saying each and every time that there is no good time for any inflation protection for retirees.

At some point, we have to slow this process down and take this seriously as it relates to retirees who have put in a number of years and are out there now living on pensions that are not adequate because of inflation. They have to have the kind of inflation protection we are talking about, and I think this committee should look at it very seriously.

On pension surpluses, we have made a very strong point that the pension surpluses are deferred wages that are invested on behalf of the members of the plan, on behalf of the people we represent, and that these surpluses are achieved through the market, as is outlined by each and every presentation, I would think.

I would suggest that if the Ford Motor Co. is very interested in having the money turned over to the Canadian Auto Workers, we would be prepared to help it invest the money. We happen to invest the money on behalf of the workers whom we represent and the staff we have. We have surplus moneys in those plans and it was not from our wise investments that we did that. It was because of the investments in the market and the return that came down on the market that allowed for the opportunity to have a surplus in these pension plans. This pension plan surplus certainly should be turned back for inflation protection.

The other point is on portability. We have outlined to you an area we think should be recommended; that a transfer of pension credits be a normal way to effect portability. The Pension Commission of Ontario should be given a reasonable responsibility to administer this.

We do not think the procedure that is being put forward in the change in Bill 170 will bring about the purpose and the reasons for the portability. I know, in dealing with the aerospace industry, that we have had a very serious problem with the ups and downs in that industry over the past 15 to 20 years. People have worked for McDonnell Douglas, de Havilland Aircraft or a number of other corporations on and off, and a number of times they have not been able to achieve their vesting rights because of the 10-year limitation, which we hope the new bill will take care of, but in fact they do not have the level of benefits because there has not been the opportunity to transfer back and forth.

We do not think the new provision is going to allow for the opportunity to be able to transfer that money back and forth either, because we do not think the industry or the plan or the corporation the individual is hired into will agree to the transfer of the funds. We think something stronger should be put in there, with the administration under the pension commission.

On the vesting, we think the 24 months of the plan for plan members is fine. That meets the criterion of allowing the person to be able to become a member of the plan, but I suggest to you there is a nightmare of administration as it relates to individuals who now are attempting to establish their vested rights up to the 10 years. At the end of 1989, individuals are going to have two years vested under one plan and maybe five or six years under an additional plan.

Very simply, our suggestion on that formula would be that in January 1989, we will have in place a system whereby once the person put in the two years, he would be vested for all the years he has been vesting under the pension plan that now exists. In fact, it would take care of the problem of administration and trying to keep track of what he would be entitled to until he is vested under the previous plan.

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Recognition of the union as a bargaining agent: This is something we have been raising with the Pension Commission of Ontario for a number of years. With regard to the amendments to the plan, we have had nothing but problems. In fact, where employers have sent in amendments to plans, no copies of these amendments have been provided to the bargaining agent and/or the employees. Amendments were made to plans with no advice whatsoever.

In time, you find yourself in the situation we have now with Eaton Yale, which shut down a plant in New Toronto and amended the plan after the plant shut down. It is going through the courts at present, but we could not get any information from the pension commission because the agent would not recognize us. At the same time, we are placed in the peculiar position of saying, "If we do not represent the workers, we can be taken to the Ontario Labour Relations Board because we did not do a proper job in representing the workers." As we see it, there is a conflict under the act, and the bargaining agent and the employees should be advised of any amendments or changes to the pension plan.

Disclosure of information relates to the same thing. On page 11, the right to appear at hearings is the same.

On retirees, a number of industries have been making the pitch that they are taking care of their retirees. I suggest to you again that some strong legislation should be put in place that says that where there is a bargaining agent, the bargaining agent would have the right to continue to bargain for those retirees. We have continual conflicts with employers that have made presentations to this board that say, very simply: "You do not have the right to bargain for those retirees. We will take care of those retirees." The issue is continually on the table. There is no question that at some point there will be a conflict with those employers over whether we have the right to bargain for those retirees. That conflict obviously will lead to a disruption that we do not need and that the province does not need.

Part-time workers: We think there should be a provision that talks about, instead of money, a period of hours where part-time workers have a standard average of 15 hours per week as a reasonable limit for them to be able to receive credits towards their pensions. It should cover all part-time workers, not earnings requirements.

Worker representation: There are two areas in Bill 170 in which the role of worker representation is not carried far enough. We believe workers should have the right to participate in the administration and trusteeship of pension

plans. If we are talking about these members belonging to the plans and knowing what is going on in the plans, then the worker representatives should be sitting on the boards, should have the input, should be on the committees and should be involved in the investments and in every aspect of the pension plan, because it is their moneys that they are going to receive when they retire.

Pension benefits guarantee fund: We think that should not be changed so much on the basis of the formula as it is at present. We think the change that is being proposed is going in a regressive direction.

On the sale and transfer of businesses, this section of the existing legislation has been subject to much abuse in the past. In most instances, the predecessor employer remains responsible for benefits accrued to the date of sale. Very simply, what happens is that on the sale, it is taken in as an asset. If there is a surplus in the fund, of course, the person who is buying the corporation has the avenue of having the advantage of either receiving the surplus and/or the employer selling, taking the surplus off before the sale and establishing a new plan. We do not have the same level of benefits. Then we have an argument about the years of past service and how you take care of that, meeting only the requirements that are in place at the date of the sale. We think there should be some major changes that take effect in that particular area and we outline them on page 14.

Discrimination in the survivor benefits: The proposal we see being put forward in that area should be scrapped. It does not do anything to improve it. It just muddies the waters. It gets us into an awful lot of other areas where we start talking about whether a single person working for an employer has the opportunity to have superior or equal coverage when it comes to benefits. If you take that and carry it to its full extent, you are really looking at whether there should be some coverage of the Ontario health insurance plan premiums that are being paid by an employer for single versus family. A single person then would be entitled to recover all benefits over and above where dependencies would be in existence under any collective agreement.

Canada pension plan offsets: While recognizing that existing regulations provide for the prohibition of the CPP offsets prior to age 65, where bridging benefits are normally available at age 65, the language in section 55 of the bill seems unclear and should be clarified. In particular, bridging benefits that were accrued prior to January 1, 1987, and for which eligibility had not yet been reached, appear to be unprotected. We ask you to take a look at that.

In this particular area, I would like to make a couple of comments about the presentations of Ford--I was not sure exactly what it was going to present today--and General Motors.

General Motors Corp. recently made statements that if there were inflation protection in this country, it would shut down its plants. In 1982, we were faced with the same situation, not through legislation but through collective bargaining, when Roger Smith, president of General Motors Corp., made the statement that if we in this country did not accept the pattern of bargaining and the lump-sum payments that were negotiated in the United States, then the corporation would shut down the plants in Canada. The plants are still going, the membership has expanded and the corporation finds it very lucrative to do business in Canada based on the cost of doing business in Canada.

I am not going to try to hide from anybody by saying that there will not be a cost, as everybody knows, for inflation protection. The Ford Motor Co. has put forward some examples here that there has been some inflation protection on an ad hoc basis that we have been able to negotiate. We have been able to negotiate those, and there has been a cost to them. Ford shows that it runs between 50 per cent and 60 per cent, but we still have the other 50 per cent or 60 per cent to pick up.

I suggest to you just that Ford, General Motors or any other corporation will continue to exist, expand and function in Canada under the guidelines of inflation protection the same as they have for every other provision where they have screamed that they could not exist or could not compete based on legislation that was put into place. I remember the argument about severance pay. The same argument was put forward by a number of employers; that they would not be able to exist in this country or in Ontario because of the cost of severance pay.

I suggest to you that there are changes that can be made. After all the debate that has been going on since prior to 1980 and all the commissions that have been put in place for retirees in this province, if we are not prepared at some point to take this seriously and do something for our retirees, it seems to me that what we really should be doing is suggesting falling in line with what Ford Motor Co. and General Motors are talking about; that is, that plans will be scrapped anyway.

Plans have not improved. They have been talking about the level of the plans. There has not been any improvement in the plans in the last 20 years. They are still at the 38 per cent level in terms of deferred benefit plans. In fact, there should be some strong legislation, as we have proposed, to take the improvements to the universal process.

That is our presentation. I hope you will take it into consideration and make changes to the provisions.

Mr. McClellan: I thank Mr. Nickerson and his colleagues, first for answering some of the questions that I put to the Ford Motor Co. I must say that I share your dismay at what I, the other day, called economic bully-boy tactics. Today, I call it almost economic terrorism on the part of the car makers, with the kind of extravagant and inflated rhetorical threats that they are making if we proceed to do what they themselves are already doing to some extent on an ad hoc basis.

Mr. Nickerson, you just indicated that your estimate is that, on an ad hoc basis through collective bargaining, the Ford Motor Co. has achieved a level of inflation protection at the level of somewhere between 50 per cent and 60 per cent on average.

Mr. Nickerson: It appears from their presentation. I mentioned to them on their way out that we will be interested in sitting down and getting an inside look at how they have costed everything.

Mr. McClellan: I was also interested in your statement about the cost of the bonus to the Ford Motor Co. executives. The total cost for the most recent bonus was how much?

Mr. Nickerson: For Ford Motor Co., it was \$167 million.

Mr. McClellan: That is one third of the cost of full inflation

protection, as I understand it. They indicated in their presentation that full inflation protection would cost an additional \$50 million. I do not know whether that is accurate, but we know that is a third less than the cost of the bonus to their own executives.

Interjection: Please do not compare worldwide numbers with Canadian numbers.

Mr. Nickerson: Whose presentation is this, ours or yours?

Interjection: The man is making a statement--

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Mr. Chairman: We cannot accept any comments from the audience to be recorded. Please continue. That is not my rule; it is a House rule.

Mr. McClellan: There was one other point I wanted to raise. You made reference to the Friedland task force, and I cannot find the place in the brief where you did refer to it. Here it is on page 8.

Mr. Gill: Page 7.

Mr. McClellan: Maybe I will come back to that. I have lost my place.

Mr. Gill: That is the Ford brief.

Mr. McClellan: You make reference to the Friedland task force. I want to find the exact quote because you made a reference to its terms of reference.

Mr. Gill: It is at the top of page 7.

Mr. McClellan: I think we have different numbering. The top of my page 7 is--

Mr. Nickerson: Which brief have you got? Have you got our brief?

Mr. McClellan: That is a good idea. I am looking at the Ford brief. Here it is. It is even underlined. You say, "We supported the creation of a task force on inflation protection which was established to develop a method to achieve the goal."

I do not know if you are aware that the minister indicated that, from his view, it was established to question the feasibility or to examine the feasibility of finding out whether inflation protection was a workable idea. You said that one of the things the task force could do was report back that it was an unworkable idea and should be abandoned. I want to ask you if that was your understanding of the mandate of the task force and whether you--

Mr. Nickerson: Not at all. My understanding of the task force from my conversation with the person who represents labour on the task force, Cliff Pilkey--and I had a number of conversations with him before he went on the task force--is that there was no question. It was made very clear from our side that we were talking about looking at formulas for inflation protection to be put into place because the government of the day supports the concept of inflation protection.

Mr. McClellan: So any suggestion that the Friedland task force is open to bringing back a report saying that inflation protection is not feasible is not part of the agreement, as you understand it.

Mr. Nickerson: That is right.

Mr. Guindon: Recently, in the United States we have heard Congress talking about making it easier for companies to withdraw surpluses. They are doing it because it is going to make the industry more competitive and they will be able to invest in their own companies. What is your opinion on that?

Mr. Gill: It has been quite easy in the past for companies in the US to terminate pension plans, absorb the surplus and then set up a new pension plan. That has been going on for four, five or six years. The amounts are in the billions of dollars. It is quite easy to do in the US right now. What is being proposed at present in terms of federal legislation is some means of restricting that to some extent, certainly not to the extent that labour and retiree organizations in the US would like to see it.

It is practically wide open at the moment, and they are actually looking the other way of trying to restrict the kind of surplus stripping and surplus withdrawals that have gone on in the last four or five years.

Mr. Nickerson: I have in front of me an administrative pension package backed by Brock (inaudible) by labour. In other words, they are going through the same argument and the same fight over there on the basis of the surplus moneys that should be left in the hands of the members of the plans and used for that purpose.

Mr. Guindon: Yes, but that is not where it is going to end up. It is going to end up where it is going to be easier for the company to take it out, as long as they reinvest it in their own business. What is probably not ethical in the United States is taking the money out and investing it in another branch. If we handcuff the Ontario corporations with Bill 170 and maybe even indexing, how does that restrict or what does that do to competition coming from the United States?

Mr. Nickerson: What do you mean by "handcuff"? How do we handcuff them? We are talking about taking the present moneys that are in pension plans, being invested in the market, being invested in bonds, being invested wherever the persons in charge of doing the investing make the recommendations to invest them. We are saying the return on them should be returned for the benefit of the people under the pension plan for inflation protection. If there is no return, then there is a shortfall and there is not any inflation protection at that time, because you have no surplus.

Mr. Guindon: Okay. Let me put it another way then. Governments play with pension plans and the funding of pension plans and do what they want with them. Would you impose the same thing on governments?

Mr. Nickerson: Governments do it. Governments take the surplus. They use the surplus for--are the government plans not inflation-protected?

Mr. Guindon: They say they are, but I have yet to see where it is a funded liability, or it is funded. I have yet to see that.

Mr. Nickerson: I do not think the government plans are funded, are they?

Mr. Wohlfarth: Some of the government plans are funded and some of them are not.

Mr. Nickerson: Some of them are funded and some of them are not funded.

Mr. Guindon: They just use paper--

Mr. Nickerson: Pay as you go.

Mr. Wohlfarth: A significant number of the public sector plans are funded, for instance, the Ontario municipal employees retirement system and the hospitals of Ontario pension plan. A number of those provide inflation protection.

Mr. Guindon: It is guaranteed by the government, is it not?

Mr. Gill: It is paid for by contributions. In fact, there are higher rates of contributions in those plans than in other plans, to pay for indexation.

Mr. Guindon: What does the federal government do with our pension moneys?

Mr. Gill: Which pension moneys are you speaking about? The Canada pension plan?

Mr. Guindon: Yes, sure.

Mr. Gill: They lend it out; they invest it.

Mr. Nickerson: And the provinces.

Mr. Gill: They invest it for a rate of return. That money is owed and, once it is owed, it is then re-lent as the terms come due. The money is not just simply taken out and never put back into the pension plan.

Mr. Guindon: It is used for the common good of everybody. Is that what you are saying?

Mr. Gill: That is right. It is invested.

Mr. Chairman: Any further questions? Thank you very much, gentlemen.

Mr. Nickerson: Thank you.

Mr. McClellan: Mr. Chairman, I need to be away for about 10 minutes and my colleague in the New Democratic Party is unable to be here this morning, but I want to assure you I will be right back and you should continue.

Mr. Chairman: Very well. Thank you.

The next presentation is from the Business and Professional Womens' Clubs of Ontario. Ms. Neville is the president. Maybe you would introduce and identify your colleagues.

BUSINESS AND PROFESSIONAL WOMENS' CLUBS OF ONTARIO

Ms. Neville: Good morning. I am Liz Neville, president of the organization. With me, on my immediate right, are Kris McDonald of our North Toronto club, Carol Lohnes from Durham region and Margaret Mackey, who is president of our Hamilton club.

In our brief, of which you have a copy, you will see the outline of our organization and the history of our participation in the interests of meaningful pension reform throughout Canada speaks for itself.

We have appreciated the leading role of Ontario in the many attempts to get consensus in these issues through this past decade, but we are very concerned by the length of time it has taken to bring forward this legislation. We feel that those retired and soon-to-be-retired individuals, many of whom are women, including members of our own organization, will suffer serious financial hardship resulting from the many delays inherent in both the bill itself and the implementation process.

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However, before we criticize, we shall first praise, but because of time limits, we shall move over that rather quickly. I am now on page 1 of our brief.

Mr. Chairman: Mr. Offer would like to know which one you are going to skip over.

Mr. Offer: The criticism or the praise? .

Ms. Neville: The praise; I beg your pardon. In fact, we would appreciate more time to discuss some of our questions with the minister at a later time, because we had very little involvement during the last two years of the finalizing of the actual legislation. I think people forgot that women were a party to this process.

We are pleased to note that the bill contains almost all the principles of the form which we have proposed over the last decade. In particular, we are pleased that the waiting period for eligibility for all employees will be no more than two years and that part-time employees must be able to join the same or an equivalent pension plan. However, we are concerned that the cutoff level of 35 per cent of yearly maximum pensionable earnings may be too high to include most part-timers. Carol Lohnes will speak to this later.

We are pleased that the maximum vesting period will be two years and that there are the provisions for portability, that employers contributions must provide at least 50 per cent of pensions earned after 1986 and that the rate of interest on contributions is prescribed on a more adequate basis.

Both the provisions for early retirement within 10 years of normal retirement age and for continuing to accrue pensions beyond normal retirement age reflect the need for flexibility in phasing in to retirement. However, we also are speaking to an amendment on this clause.

The splitting of pension assets on breakdown of marriage reflects that the method of how that shall be done is satisfactory.

The pre-retirement death benefit and the mandated joint and survivor benefits are, in general, commendable.

We are pleased with the provisions that surviving spouses who remarry after January 1, 1987, will not have to give up their survivors' pensions. Our only regret is that some survivors may not have been aware of this possibility and will be disadvantaged because of the long delay in implementation. This change in particular should have been retroactive to January 1, 1985.

The comprehensive provisions to prohibit discrimination on the basis of sex are most welcome. We understand this will also apply to prescribed registered retirement savings plans to which a deferred pension may be transferred.

We recognize that the province cannot further this at the federal level, and we shall continue to urge the federal government to prohibit the use of sex-based mortality tables and actuarial assumptions through the annuity and insurance benefit systems. We do not consider these factors are reasonable under the Canadian Charter of Rights and Freedoms.

In spite of our approval of the general principles, we foresee real shortcomings in the implementation of some of them and, in particular, in the lack of inflation protection, which we shall be speaking to later.

I will now move on to part II of the brief.

Our first recommendation relates to the need for all members of employer-sponsored pension plans to understand the complex and far-reaching provisions involved in their pensions. We welcome the general rules for disclosure and so on, but we feel that this should go further.

Our first recommendation is that it should be the responsibility of the Pension Commission of Ontario to provide education to the general public to promote understanding of the provisions of the Pension Benefits Act and that resources be allocated to it for this purpose. Second, we recommend that the powers of the commission to conduct surveys and research programs include the mandate to study the impact of employer-sponsored plans on retirement income levels and to publish an annual report of its findings.

Carol Lohnes will continue on the subject of part-time workers.

Ms. Lohnes: We are pleased that part-time workers will be able to join the same or an equivalent pension plan as full-time workers. We are also pleased that the definition of part-time workers will apply to a broad range of employees who work less than full-time continuously.

However, it is important that the provisions under which part-time employees participate in the plan ensure that equitable arrangements prevail which do not circumvent the intent to allow part-time employees to benefit from employer-sponsored plans.

Bill 170 needs to be strengthened in four areas to make this a reality. These four areas are set out in recommendations 2, 3, 4 and 5 in our brief, part II-B, pages 3-6, relating to subsection 32(3) and section 35 of this bill.

We are concerned that plans may be designed to discourage participation of part-time employees. The intent of our recommendation 2 is to ensure that this cannot occur.

Because of the level of the earnings qualification of 35 per cent of yearly maximum pensionable earnings in the last two years, the majority of

part-time employees, especially women who work close to the minimum wage, will not have the opportunity to join a plan.

It is possible that some employers may even limit the amount of work available to part-time employees to ensure that they do not qualify. Please allow me to illustrate: 35 per cent of the 1987 YMPE is \$9,020. At minimum wage of \$4.35 per hour, a part-time worker would have to work 40 hours a week to qualify. That excludes all workers who earn minimum wage.

For part-time workers to qualify they would have to work, say, 30 hours at \$6.00 per hour, or for the more typical "half-time" worker, for half of a 40 hour week, or 20 hours, the wage would have to be \$8.71 per hour. For half of a 35 hour week, as is typical for clerical workers, or 17.5 hours per week, the wage would have to be \$9.96 per hour.

The majority of part-time workers, particularly women, do not earn this kind of money. We are recommending that the earnings qualification be reduced to 25 per cent, which would more accurately reflect the realities of the work place. Twenty-five per cent of the 1987 YMPE is \$6,440: those at minimum wage would qualify at 28.5 hours per week. If you look again at the typical half-time worker, those at 20 hours per week would qualify at \$6.20 per hour; those at 17.5 hours per week would qualify at \$7.08 per hour.

In other words, for those half-time workers working 17.5 hours per week, a typical clerical position at the 35 per cent, those earning less than \$9.96 are excluded. At 25 per cent, which we are recommending, those earning between \$7.08 and \$9.95 would have the option of joining a pension plan.

Our recommendation 3, therefore, is to reduce the earnings qualification from 35 per cent to 25 per cent of YMPE; for those earning 35 per cent or more, that participation be on the same basis as for full-time employees; for those at 25 per cent or more, but less than 35 per cent, participation be optional.

Our recommendation 4 deals with a situation where participation in a pension plan is optional. Those part-time employees who opted not to join at the time they became eligible should continue to have the opportunity to join at a future date.

Our fourth concern is that earnings of part-time employees be annualized to ensure an equitable pension with that of full-time employees and this is the basis of our recommendation 5.

Amending subsection 32(3) and section 35 of this bill as per our recommendations 2, 3, 4 and 5 will ensure that part-time workers benefit more equitably from employer-sponsored plans.

Ms. Neville: I now want to go on to the new provisions for vesting, portability, locking-in and deferred pension benefits. They look good on the surface, but we are extremely disappointed that these provisions apply only to benefits accruing from January 1987. This means that all employees who did not meet the previous vesting rules of the plan will have their pension benefits or deferred benefits, with respect to their service prior to December 31, 1986, calculated on the basis of their own contributions plus interest at the low pre-reform levels of three to five per cent instead of a commuted value of a deferred pension. This is unrealistic.

Over 75 per cent of members of existing pension plans have vesting rules of 10 years or less.

In such cases we understand that they will be considered eligible for a deferred pension at the qualifying date at which vesting was available under the former plan. For example, for 13.2 per cent of employees, immediate vesting is and was available.

1120

We understand further that the cost of extending two-year vesting to all of past service would be very low, and our source of this is the industry itself, which has made this comment. We are not in a position to do this costing ourselves. This would ensure that more viable deferred benefits were portable and available for an early retirement pension and for the survivors' pensions. This will be especially important to workers who have changed jobs frequently and to the many women who have entered the work force at an older age, all of whom have short service by definition and need the benefit of the calculation of all of their service as a deferred pension.

We believe that there will be considerable loss of credibility if the vesting rules are not retroactive, because the general public has been given the expectation that the rules of vesting and portability will make a difference to them now.

The 45-and-10 locking-in rules prior to December 31, however, should remain as employees may have had plans about the disposition of these funds and we see no conflict in that occurring.

We recommend that section 38 be amended so that a deferred pension is available to all employees after two years of membership in a pension plan with respect to all their past service.

I am now on page 8 of our brief, if anyone is trying to follow me. Our further concern is the portability of early retirement pensions. The transfer of an actuarially reduced early retirement benefit to a prescribed registered retirement savings plan or for the purchase of a deferred life annuity should be possible. This is especially necessary for those whose early retirement is not entirely voluntary and may also be a necessity for those women who have short service because of late entry to the work force.

Recommendation 7 therefore is that the reference to section 42 within subsection 43(1) of Bill 170 be deleted to permit the transfer of the actuarially commuted value of a deferred pension during the 10 years immediately prior to normal retirement age under a plan.

Ms. McDonald, will you take over?

Ms. McDonald: I would like to talk on pre-retirement death benefits. I would like to paint you a little scenario. My neighbour Jim Peters will retire on May 1. By the way, the names have been changed to protect the innocent. Jim and Mary, his wife, have looked forward to his retirement with great anticipation. They have lived frugally and are prepared for their retirement. Jim's pension will pay \$698.42 a month. This, together with Canada pension plan retirement benefits and a small RRSP, will allow Jim and Mary to retire carefully and with some comfort, but certainly with no frills.

If Jim were to die today, before his retirement, according to the provisions presently in Bill 170, the only part of his pension that would be payable to Mary would be his total contributions to the pension plan plus interest or, in this case, \$4,487.33. That sounds like a fair amount of money;

but Mary is only 61 years old and is actuarially projected to live for at least 16 years.

This lump sum payment would provide Mary with a monthly annuity income of \$42.58 a month. Even with Canada pension plan survivor's benefits and her RRSP, this would surely enrol her in the ranks of the elderly female poor, because her husband died two weeks too soon. This is what the provisions of Bill 170 allow for pre-retirement death benefits. The situation would be even more critical and more heart-wrenching if Mary were younger and there were three dependent children who had to be provided for and educated.

Because of the intrinsic unfairness of Jim and Mary's situation and the anguish and hardship, were dependent children involved, we of the Business and Professional Women's Clubs feel that the beneficiaries should be entitled to the full pension benefits on the death of the worker, whether he dies before or after his retirement date.

We have studied this question in great detail and tried to find a formula or scheme to provide varying payments at varying times of eligibility and work service, because of the difference between a young couple with a small child and Jim and Mary, for example. The variations and permutations are endless and the potential for confusion beyond comprehension, even to actuaries. The only way that we can see to resolve the situation is to make it so that the surviving spouse and/or dependent children must have access to the entire commuted value of the pension of a deceased contributor under all circumstances.

Now, you say that this is going to cost money. Yes, it is going to cost money, but actuaries have been working for years on looking at a group of people, saying, "Out of these 1,000 people, how many are going to die sooner than expected?" and figuring out the cost to that. In actual fact, the projected actuarial cost would be minimal among other benefits, so we wish subsection 49(1) of Bill 170 to be amended to allow for payment of the full commuted value. In addition, we want single members who are unmarried to be entitled to the pre-retirement lump sum death benefit from the deferred pension based on a member's service after December 31, 1986.

There is another facet that we discovered in Bill 170 that creates some real problems for us. Picture, if you will, Jim and Mary again. Before Jim dies today, he moves out because of continuing problems in the marriage, so Jim and Mary are living separately, without a separation agreement or any kind of legal document that formalizes their separation. According to Bill 170, death benefits are not payable to Mary if they are living separate and apart.

The legal profession and women's groups have been trying for years to instil a legal separation onus on separations so that when a separation occurs, there is some kind of legal document that formalizes the financial situation. Yet, here we are with Bill 170 where we have two sections, clause 45(4)(b) and subsection 49(8), which clearly indicate that if the parties are living separate and apart, no benefits are payable. There is no mention of legal documents.

What we are recommending is that appropriate benefits are payable unless the spouses are living separately and apart and have a separation agreement or court order that permanently settles the financial arrangements of the spouse. That is the critical legal step-in and it must be there, if we are not to fly in the face of the Family Law Act and all other actions that have attempted to make separation a formalized and much neater, progressive step.

We have noted with interest that in section 54 of Bill 170, which provides that where the normal form of a pension is a joint and survivor's benefit, the commuted value of the pension payable to the former member, who does not have a spouse, shall be equal to the commuted value of the joint and survivor pension benefit. What we foresee, however, is that in doing this, it is possible for the pensioner or the plan member to become entitled to a higher pension by opting out of the joint and survivor aspect, whether he is single or not. So this could create problems for an individual or the spouse of an individual or the partner of an individual.

1130

The Background Paper on Discrimination on the Basis of Marital Status in Employment Pension Plans by the Ministry of Financial Institutions notes an alternative to provide single persons with a pension with a guaranteed period, such as 15 years, which provides commuted values reasonably equivalent to commuted values of pensions for married people. What we want to see is that there is no advantage or disadvantage in being married or single as regards pensions.

In recommendations 10 we indicate that on application to waive the joint and survivor's pension benefit, a statement be required so that it is very clear that all members in a transaction are aware that this benefit is being waived and of the changes in their potential income.

Recommendation 11 indicates that in the public sector, for single individuals, the guaranteed 15-year pension be available.

Now I would like to turn it over to Margaret Mackey.

Ms. Neville: On the subject of protection against inflation.

Ms. Mackey: Protection against inflation in Bill 170: The Business and Professional Women's Clubs of Ontario believe the time has arrived to end procrastination on this vital issue. There is nothing in the reforms to the Pension Benefits Act which guarantees any form of inflation protection.

The Minister of Consumer and Commercial Relations has suggested that indexing the pension to the inflation rate will follow, pending a separate review by a three-man external working group whose mandate is to determine the most appropriate formula and phase-in procedure for inflation protection. This committee is expected to report back in approximately a year.

Only last week, during a presentation by the chamber of commerce, Mr. Kwinter seemed doubtful about supporting this particular issue with regard to Bill 170. Your predecessors have recommended inflation protection of 60 per cent of the consumer price index with a cap at eight per cent. This would appear to be a workable starting position.

We believe the retirement income of the citizens of Ontario should be protected against inflation. Pension funds have increased in value dramatically over the years. In the past 11 years, while inflation has averaged eight per cent, pension funds have earned average rates of return in excess of 14 per cent. These earnings in excess of the rate of inflation could be used to pay for inflation indexing, instead of being withdrawn by the companies or the government for their own use.

Speaking from personal experience, if my father's pensions--his company

pension plan, the old age security and Canada pension plan--were not protected from inflation, he would not be independent today at 86 years of age after more than 20 years of retirement. You can see that inflation protection is not a new idea. It has been provided in union negotiations for over two decades.

Living costs more for the additional services senior citizens require as they age and not all these services are provided free. It is almost unheard of for prices to be reduced once they have gone up. Pensions should be treated the same way. Our senior citizens lose many capabilities as they age, but if they can maintain their financial independence, they retain their pride.

The Business and Professional Women's Clubs of Ontario stress that there has been enough discussion. It is now time for action. Bill 170 should be amended immediately to include inflation protection.

Ms. Neville: In conclusion, we want to stress our beliefs, held over the past 10 years, that pension reform must accomplish four things: adequacy, universality, equity and portability.

Our review of Bill 170 has shown that nearly 10 years later, having opted to continue to rely on employer-sponsored pension plans, the resulting benefits to workers, especially women, will still be far from adequate, not universal, and that the rules of equity and portability will be in jeopardy if our recommendations are not adopted. We have expressed strong support in our brief for the principles behind this bill and many of the measures in it.

We encourage the standing committee on general government to swiftly make the necessary amendments to ensure that the reforms which are long overdue can be implemented without further delay and further injustice to workers. Thank you.

Mr. Chairman: Thank you. Are there any questions?

Mr. Lupusella: Mr. Chairman, I have a simple question to raise before the organization. It is based on the principle that 62 per cent of the total population in Ontario is not covered by a private pension plan. I am sure a good portion of the 38 per cent which is covered are women. On the portion of the population that is not covered by any private pension plan, do you have any suggestion for that?

Ms. Neville: I think the time for suggestions for them has passed for the moment. We were hoping there were going to be different reforms with respect to Canada pension plan and the measures under that. What we are faced with at the moment is making the best deal possible out of this bill for at least those who are covered, and hopefully to make it more possible that more part-time workers, 70 per cent of whom are women, do really get a chance to participate in this employer private system.

The reason we feel so strongly the measures we have suggested must come into play is partly because it is the pension industry, the private sector employers in particular, who have lobbied so strongly against expanding the public pension plan system and strongly urged the continuation of this system. Therefore, I think it is incumbent on them not to raise a scary picture of how they will cut back on these private pension plans. That really points to the second part of our first recommendations, that we do hope the impact of this method will be examined very closely, not just on the retirement incomes coming out of private pension plans, but on the whole question of retirement income and whether, within the next 10 years, we need to throw all this

overboard and, indeed, expand the Canada pension plan.

Mr. Lupusella: Thank you. I have another question I would like to pose for you.

Considering that the majority of women in the past have been receiving lower wages in the private sector, with the improvements which will occur as a result of Bill 170, do you think there will be a reduction of the level of benefits at the time of retirement, based on the premise that a lot of women used to get less pay by working?

If I may try to--

Ms. Neville: I am not quite sure I understand whether you are asking about--

Mr. Lupusella: Yes, it is a little bit confusing.

Ms. Neville: --their wages while they are working or their retirement income.

Mr. Lupusella: As you know, women have been employed in the private sector for a long time, but there was a discrepancy in wages between men and women.

Ms. Neville: Yes.

Mr. Lupusella: Do you see this discrepancy in the private pension plan as well, due to the fact that, let us say, they are not receiving a good salary?

Ms. Neville: That is a problem which will continue for a long time because people will not throw off the benefit of their 64 per cent wage for a long time to come. That is why we support the inclusion, both in the public and private plans, of the continuation of the survivor's benefit. We do not want to see anything that jeopardizes that.

On the other hand, when we were speaking of the pre-retirement death benefit and so on, we are aware of the many single parents and single women, single-parent families, and the need to increase the pension payable to single persons. With respect to death benefits, many of them indeed have assumed dependents, even if they are not actual dependents in fact, to support the low income of mothers who retire on a low pension basis, for example, and fathers too.

1140

Mr. Lane: I would like to make a comment. I would like to congratulate the ladies for presenting an excellent presentation and explaining it very well. The scenario you went through about Jim and Mary brings home a couple of points that probably otherwise would have been missed; that Mary would be in very bad circumstances in the case of Jim's early death or in the case of a separation where there were no legal papers. I think the scenario drives home the point exceptionally well. Thank you very much.

Mr. Chairman: Thank you for your presentation. That completes the presentations for this morning, with one cancellation. We will start at 2 p.m.

The committee recessed at 11:41 a.m.

STANDING COMMITTEE ON GENERAL GOVERNMENT

PENSION BENEFITS ACT

WEDNESDAY, APRIL 15, 1987

Afternoon Sitting



STANDING COMMITTEE ON GENERAL GOVERNMENT

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Anderson, A., Research Officer, Legislative Research Service

Kaye, P., Research Officer, Legislative Research Service

Witnesses:

From United Inco Pensioners, Fraternal Members of Local 6500, United Steelworkers of America:

Racicot, S., President

Corns, W., Executive Secretary, Canadian Council of Retirees

Campbell, A., Member, Employees and Pensioners Committee on Inflation Compensation

From William M. Mercer Ltd.:

Dowsett, R. C., Vice-Chairman

McCaw, D., Director

From the Ottawa-Ottawa Carleton Pensioners Association:

Moorman, J. D., President

From the Trustees of Labourers' Pension Fund of Central and Eastern Canada:

Rivers, W., Consultant; with Martin E. Segal Co., Ltd.

Koskie, R., Legal Counsel; with Koskie and Minsky

D'Agostini, O., Administrator

From the Faculty Association at Lakehead University:

Stafford, J., Member

From the Ministry of Financial Institutions:

Kwinter, Hon. M., Minister of Consumer and Commercial Relations and Minister of Financial Institutions (Wilson Heights L)

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday, April 15, 1987

The committee resumed at 2:06 p.m. in room 228.

PENSION BENEFITS ACT
(continued)

Consideration of Bill 170, An Act to revise the Pension Benefits Act.

Mr. Chairman: Stan Racicot of United Inco Pensioners, will you please take a seat at the microphone? Please introduce to us those who are with you. Please proceed.

UNITED INCO PENSIONERS

Mr. Racicot: Mr. Chairman and members of the committee, it is a pleasure to be here today. I would like to thank those who were involved in making my visit here possible. It was quite late when I learned that these hearings were being held and I believe the rules were bent a little to accommodate me. Thank you very much.

While making arrangements with your office for my presentation, I think there was agreement that the committee might like the idea of having discussions with a mere pensioner, a victim of inflation.

I would like to say that I am here with the unanimous approval of our board and our membership. They will be anxious to hear of any outcome.

The United Inco Pensioners, of which I am president, was formed about three years ago around a program that serves as our constitution. A copy of our aims and purposes is attached and is marked as item A.

We are affiliated with three high-level organizations: the United Senior Citizens of Ontario, the Canadian Council of Retirees, which is sponsored by the Canadian Labour Congress, Ontario section--it operates out of Toronto in the Don Mills area--and also the National Pensioners and Senior Citizens Federation. These organizations are an inspiration to us. Their leaders engage in a never-ending struggle to improve and protect the way of life for retired Canadians. Their policies are formed at conventions where resolutions from affiliated clubs are debated and adopted. In that area, you may look at attachment B which supports this statement.

Before I go on with my story, I would like to introduce two gentlemen who are with me. Bill Corns, on my left, is the executive secretary of the Canadian Council of Retirees that I have just mentioned. On my right is Art Campbell who I am sure you know all about. I understand he was here yesterday with a presentation.

Mr. Chairman: He is here every day, just for your information.

Mr. Racicot: I was not aware of that. I never met the man until just

a few minutes ago although I have corresponded with him. I am sure we think a lot alike, although he is a different kind of a man than I am.

Now we will go on with the story.

When I retired from Inco Ltd. in 1979 at age 65, after more than 44 years on the Inco payroll, I found myself in the centre of double-digit inflation years. This worried me and I resolved to do something about it because Inco's pensions are not indexed. Ad hoc increases are rare and insufficient to offset inflation.

I joined three retirees' clubs before I found one that was willing to take the strong action necessary even to start to solve the problem. At that time, many clubs had very little to offer retirees other than to socialize. No wonder so many companies would not provide inflation protection for their retirees. Something had to be done.

At this point I would like to say that I am not an actuary or a mathematician and sometimes I have problems with the old-fashioned arithmetic; nor am I a wizard, so I will not try to dazzle the committee with a bundle of figures or equations and then pull a magic answer out of a hat and tell you, "This is what we want." My purpose here is to tell you the Sudbury story as it affects retirees and their families and the many problems we encounter as we try to cope with inflation and related difficulties. We ask the committee to keep us in mind throughout its discussions and when making its report to government. We believe there is a fair solution and that you have the mandate to recommend it.

The nickel capital of the world had become the unemployment capital. Massive layoffs in industry in our community and the chaos that followed brought the elderly, the unemployed and the young together in seeking solutions and justice. The unemployed were our sons and daughters and their children were also ours, as always. There were no longer any generation gaps because we had learned that, divided, any group that could not speak up for itself loudly and strongly would be left behind in this crazy, highly competitive and profit-hungry business world of today.

In 1980 and 1981, the inflation rate rose to 10.2 per cent and 12.5 per cent. I had joined the Sudbury Regional Senior Citizens by this time, which is an umbrella group for affiliated clubs in the area, and I had no trouble in convincing the officers and members that we should do something about our shrinking Inco pension dollars. Up to this point, it seemed that everyone was complaining, but doing very little else. That situation is changing by the way.

In January 1982, with the inflation rate at 10.8 per cent, we presented a brief to a Progressive Conservative task force on the federal budget and the economy that was holding public hearings across Canada, including Sudbury. We gave them the Sudbury story and they told us they would do all they could to get the Liberals moving.

In April 1982, we invited Douglas Frith, member of Parliament for Sudbury, to attend our general meeting to speak on pension indexing. He informed us that government plans were to have the private sector carry more of the pension load in the future.

In February 1983, while I was secretary of the Sudbury Regional Senior Citizens, I received a book from the federal government on pension reform, compliments of Doug Frith. It was referred to as the green paper and its title

was Better Pensions for Canadians. What a beautiful masterpiece. We loved it.

The following shows why we were so emotional about it: Canadians may look to the future with increased confidence that they will find security, dignity and fulfillment in retirement. Elderly Canadians should be guaranteed a reasonable minimum income. Canadians should be able to avoid serious disruption of their pre-retirement living standards upon retirement. Pensions can no longer be regarded as rewards for faithful service. Pension credits should be considered as assets of plan members. High returns on pension fund investments should be applied to inflation protection for workers and pensioners. Provinces were invited to participate in achieving a consensus vital to all. In fact, everybody was invited to get on the bandwagon. Our inflation protection was just around the corner. This was the answer to our dilemma.

We contacted Mr. Frith, chairman of the pension reform committee, and requested that one of those meetings be held in Sudbury. Our request was granted. A good turnout of citizens heard the briefs presented by pensioners, unions, women's groups and individuals. We told our Sudbury story in much greater detail than this presentation today and asked for implementation of suggestions outlined in the green paper. We were full of hopes for the future.

The task force received hundreds of submissions from groups and individuals as it conducted hearings across Canada. The job they started out to accomplish was going well with the green paper proposals until they met the powerful Business Committee on Pension Policy in Ottawa in a four-hour session, and another four-hour session was planned to be held in Toronto. Attachment C shows the fourteen superpowers that made up the business committee at that time. There are also some comments on that sheet.

Mr. Charles Baird was chairman of the business committee and also chairman and chief executive officer of Inco Ltd., our company.

Minutes of proceedings show how cunning and ruthless these mighty people can be for their own financial gain. I give you four statements made by our own Mr. Baird, taken from the minutes, issue 28, page 8.

1. "It is not reasonable to have as an objective of pension reform a level of retirement income as high as that of the working years." Our answer to that: How ridiculous can you get?

2. "Government-mandated arrangements should not make pensioners better off than average working Canadians with dependents." Our answer: What a dream. This could never be accomplished at Inco.

3. "Needs diminish in retirement years." Answer: This is a fallacy. The costs of bread, butter and beans keep rising in retirement, as do the costs of housing, heating, transportation, taxes, etc.

4. "Private sector pension plans which invest funds through the capital market had great difficulty in keeping up with the rate of inflation in the last decade." Answer: We are told that pension plans produced the highest profits during the years of high inflation.

That will be the end of the charades for now. Let us get serious.

The last decade referred to by Mr. Baird would be 1973 to 1982. It included all five years of double-digit inflation for a total of 96.3 per

cent, and we wonder how those financial wizards missed the big haul. Inco used \$105 million of pension fund surplus to reduce its debt, which proves the pension fund investment was earning money, money that should have been used for inflation protection for active and retired plan members.

1420

I took it for granted that the members of the committee were aware that recently I wrote a letter to the Premier (Mr. Peterson) requesting changes in the Pension Benefits Act. Just in case some may have missed it, a newspaper copy is attached as item D. The high points are underlined for easy reading.

We know we are getting a raw deal from the company, yet it tells everyone else that it is taking good care of its pensioners. We have been reaching out to retiree organizations, unions and government with the truth. We are getting great support and it is growing. Our resolutions on inflation protection, representation, beneficiaries, surplus skimming and protection in bankruptcy are being pursued now more than ever, yet most improvements in pensions in this period are designed to entice workers to take early retirement, and older retirees are forced to subsidize the deal and remain on the waiting list themselves. This is another area where government action is needed.

Government pensions are indexed and governments have been recommending inflation protection in private plans for years or decades, but they have always backed away because of heavy pressure from big business. Governments must stop turning their backs to retirees. We cannot afford to continue subsidizing others any longer. We are in dire need of extra income to meet the rising costs of maintaining our own homes. We now are positive that only legislation will bring justice. We appeal to this committee to ask government to legislate inflation protection with equal improvements for present and future retirees.

I would like the committee members to look at the last two attachments, E and F, which show that some companies care about their employees and provide inflation protection.

Let us take item E. The Toronto Transit Commission Pension Fund Society has been operating with a board of directors composed of four members appointed by the union and four by the TTC. It has been indexing pensions, using the excess interest principle, since 1975. It is not compelled to index, but it does so because it is appreciated by the employees. The system has been tested and it provides substantial and reliable protection against inflation. The society's attitude is a vastly different attitude from that of the business committee.

Now we go to item F. The Rockefeller Foundation indexes pensions on the theory that if investment returns keep pace with inflation, the net cost of indexing pensions to inflation is zero. The foundation also established the indexed plan in 1975, which is 12 years ago. Its theory is that the investment return in the fund should be three per cent over the inflation rate. Cost control is achieved by indexing to both the interest rate and the inflation rate. The foundation believes that the plan's indexing meets the toughest criteria that can be devised. It is sound, it is safe, it works and it provides inflation protection after retirement, in every year, without extra costs. How about that?

I think perhaps I have gone over. However, I would like to add this. It

is a shame that some companies must face legislated inflation protection for employees, but it is evident that it must be done. However, any legislation must make allowances for cases, such as the two above, where companies care for their employees.

Mr. Chairman: Thank you very much. Are there any questions for Mr. Racicot?

Mr. Lane: I was reading the letter you sent to the Premier. Could I ask whether you got a reply to your letter?

Mr. Racicot: Yes, we got two replies.

Mr. Lane: Are they in the affirmative?

Mr. Racicot: There was no commitment but it was a fairly good response. The consideration would be there.

Mr. Chairman: Are there Any other questions?

Mr. Guindon: Mr. Racicot, are you afraid that in Bill 170 we will forget the pensioners who are already receiving the benefits?

Mr. Racicot: That is the type of people I represent in our club. There is an awareness, though, among those on the job that they had better do something now while they are still working, so that when they come off the job, they do will not have to go through the same trouble. They realize the dangers of inflation reducing their benefits. They do not want to go down the road to the poorhouse.

Mr. Guindon: If there is any benefit for the pensioners on indexing, I gather you would like to see it made retroactive.

Mr. Racicot: You call it "retroactive," but those funds--surely they did not drain everything dry. If they did, we do not know where it went to. Did that money all go to pay off debts too? We have an entity there, one that went out. We paid in longer than the workers today.

Mr. Guindon: Do you feel the union or the company is in a position to help you?

Mr. Racicot: Yes, of course, they do.

Mr. Guindon: Will they?

Mr. Racicot: Pardon?

Mr. Guindon: Do you think they have the will to do it; to help?

Mr. Racicot: No. They have no will to do it. I have the minutes of those hearings that were held. All the way through, "We cannot afford it."

Mr. Guindon: That is the company's part. What about the union part? Is it representative of your views?

Mr. Racicot: No. The union is a sponsor of our retiree club. They service us. They give us practically anything we need in the line of a place to meet and the use of their newsletter or magazine. We get up at meetings and

speaking. They bend the rules a bit too. The regular membership meet, and we get up and speak. They have paid the way for one or two of our executive officers to go to the big conventions and even to our own conventions. They have paid the way for two of us to go to the United Senior Citizens of Ontario convention. They are good to us, and they try to get--but they are wrapped up in this big business now of--they say to create jobs.

I do not think they hired one hourly-rate employee since I left there in 1979. That is not creating jobs. What they are doing is getting rid of jobs. They are just changing the type of job with this high technology. You might say, "Well, we cannot blame them," but they are doing it to make money. They have made money, and they have used our money; let us have some of it.

Mr. Guindon: Have you spoken directly with the local in regard to your dilemma? That is what I am trying to ask.

Mr. Racicot: Yes.

Mr. Guindon: What was their answer?

Mr. Racicot: We have been doing this all along, and their answer was good, "We will get you all we can." So they get us all they can. Now and then, we do get an ad hoc increase.

During the last negotiations for the 1985 contract, things were tough, and they did not get too much in any area. Besides that, while negotiations had just started, they had not got down to hard bargaining yet, the company put out a news release that it was going to give its hourly-rate employees--well, all its employees--an increase in pensions, but it held back the amount until after negotiations were settled about a month later. They came out with a big increase of \$25.

Mr. Guindon: A month?

Mr. Racicot: Yes, a month.

Mr. Corns: In answer to your question, sir, as you know, last week the Ontario Federation of Labour made a presentation, which I was here for. I would personally think the OFL would assist all retirees, regardless of whether they were union people or not, to get some type of reactivity--I have the wrong word there.

The idea is just that we who went out on early pension are suffering. I am not personally suffering, but many of my friends are. We read from Statistics Canada that 52 or 53 per cent of all seniors getting old age pension require some form of a supplement. That includes those who, in many cases, are getting private pensions; their pensions are so small. This is why we would like to see it dated back to the time we went out.

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Mr. Guindon: Is the only avenue that you have--to get in touch with the company, which is Inco Ltd. in your case, to shake them up or to make them aware of your problem--through the union? You do not have an avenue directly to Inco?

Mr. Racicot: We notified them last year that we were asking our union to bargain with them, and that the union had agreed to act for us. We

got a reply back. It did not say yes or no, but it did say that they did not intend to make bargaining for retirees a subject for negotiations. That was not their outlook. They were not preparing for it at the time.

We expected something like that. We expected it to be put a little more bluntly, like it used to be when I was young and in my prime and meeting down here in conciliation, where the company flatly refused to bargain on pensions. They told the chairman of the conciliation board that pensions were not the union's business, but the chairman did answer that pensions were the union's business.

It went on from there, but very little progress has been made yet. That is why I would ask the government to take a hand in this.

My friend on my right, Mr. Campbell, asked if he could say a few words.

Mr. Campbell: Just commenting on this issue, earlier. Stan Racicot provided me with some figures a while back on the ad hoc increases they had got. I wish I had them with me now, but I think it was something like a 1972 retiree was getting a pension with the purchasing power of roughly 52 per cent of what it was when he retired. I think this was 1985. That is with the ad hoc increases.

This is at the same time that Inco took \$105 million out of their pension fund. Again, if my figures are right, it is something like \$18,000 per member was taken out of the fund by Inco.

Mr. Guindon: I will let somebody else ask questions, Mr. Chairman.

Interjection: Supplementary to that--

Mr. Pollock: You get your Canada pension and your old age security on top of your regular pension you get from Inco?

Mr. Racicot: Yes.

Mr. Pollock: That is all I wanted to know. I assumed you did, but I--

Mr. Racicot: Yes. We are not complaining, here, today, about government pensions. We are here today to talk about private pensions, company pensions.

The main point I would like to make, this time--I do not suppose you hear too much of it yet--is that any benefits that are forthcoming, we are asking that they be divided equally between present pensioners and future pensioners.

Mr. Lane: What is the situation regarding the widows of former pensioners? Are they having more difficult--

Mr. Racicot: It is a disgrace. That is something, too, that I am glad you brought up. In our membership, we hear the most pitiful stories of women who are getting older, getting tired of work, doing with so little because they do with either half a pension or quarter pension, from a few years back, when pensions were not quite as high as they are now.

They get a real dirty deal. Some of them get nothing, absolutely nothing--the wife of a retiree--because of a split idea. When the worker goes

on pension, he and his wife get together and they decide, "Can we live on a split pension?" The guy says, "Honey, I love you. If I die first, I want you to have some." Then the loving wife says to her husband, "But you worked for it. Take it now and we will both live on it together."

I know we all have to die but you do not think of it every day. On a decision like that we go at it together. In that case the widow gets nothing.

Mr. Lane: In most cases, though, those ladies would not have been in the work force so there would be no Canada pension or anything like that. It would just strictly be old age security after 65 or spouses allowance prior to that.

Mr. Racicot:--inaudible--and so on. There are now widows' allowances.

Mr. Lane: After 60.

Mr. Racicot: Yes.

Mr. Lane: Thank you.

Mr. Chairman: Thank you very much, gentlemen, and thank you for coming down.

Mr. Racicot: Thank you very much.

Mr. Chairman: Your brief was well done.

The next presentation is from William M. Mercer Limited, Mr. Dowsett, vice-chairman and Mr. McCaw, director and head of Canada west. Your submission from Mercer is in the brown folder that you were given most recently. Please proceed when you are ready.

WILLIAM M. MERCER LTD.

Mr. Dowsett: Thank you, Mr. Chairman, honourable minister, gentlemen and Madame Clerk.

We are pleased to present our views on Bill 170 and the draft regulations. William M. Mercer Limited is the largest employee benefits, pension and compensation consulting firm in Canada with 600 employees from coast to coast.

Representing the firm today we have the grey and the black, the old and the new. I am Rob Dowsett, vice-chairman of the firm in grey, and the young and black is Dan McCaw, director and head of Canada west. We are both actuaries, both fellows of the Canadian Institute of Actuaries and fellows of the Society of Actuaries.

We would like to congratulate the Ontario government on working with the other jurisdictions in Canada on pension reform consensus. By and large the thrust of the legislation is good and there are many helpful provisions in Bill 170 which will aid in the building of an effective system of retirement plans for Ontarians. However, we have a number of concerns and we would just like to highlight those with you.

There are three parts to our submission prepared by a number of senior Mercer consultants. Part A is nine key issues of a general nature; part B is

12 less vital but none the less important issues dealing with sections of the bill; and part C, which is dealing with the less vital but important provisions of the regulations.

Because of time constraints, we are not going to review today any more than five of the key issues. These are set forth on pages three to 15 of our brief. The five points we are going to cover are: inflation protection, surplus withdrawal, uniformity of legislation, group insurance offset in the pension death benefit and section 54, discrimination on the basis of marital status.

I am going to let Dan McCaw review the five key issues. We hope to do that in about 10 minutes and then have some time for questions and interplay between the members of the committee and ourselves. Please break in if there is a point in Dan's presentation where you would like to clarify something.

Mr. Chairman: I think if you give them that flexibility you will have a problem. I think I will overrule you and say they cannot cut in until the presentation is finished.

Mr. Dowsett: Thank you.

Mr. Chairman: I will invite you back someday when that happens. It is fun.

Mr. McCaw: That is better for me because usually if somebody cuts in I have to go back to the beginning and start all over.

Mr. Chairman: We have a control on that, too.

Mr. McCaw: Inflation protection was the first issue Rob mentioned that we wanted to cover briefly.

In its present form, Bill 170 does not have provisions for dealing with inflation protection, and therefore I just wish to make a general comment.

We understand that there is a working group established by the Ontario government to determine the most appropriate mechanisms for inflation protection. Assuming they will be receiving submissions in due course, we will deal with a more detailed commentary to them.

We at William M. Mercer Limited do not support the mandating of inflation protection. We feel that the sponsors of private pension plans should be encouraged but not forced to provide post-retirement inflation protection. We support voluntary action by employers to provide that pension plan members have a substantial portion of their retirement incomes protected against inflation, and in my experience the vast majority of major Canadian corporations do that and do that, probably, in the area of 50 per cent to 60 per cent of inflation.

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If Ontario were to mandate inflation protection, it would be the only jurisdiction in North America to take that approach at this time. We fear that the added cost to Ontario employers would impair their ability to compete in the world economy and may well discourage growth in our economy in Ontario.

Another important disadvantage is that the ability of an employer to

provide larger increases to pensioners who are in most need might be impaired. By that, we simply mean that many employers choose, rather than to give across-the-board increases, to funnel the money towards pensioners who have the greater need, those with smaller amounts of pension who may have worked a fewer number of years to accumulate their pension benefit.

Finally, further requiring pensions to be adjusted in relation to inflation would open the door to unanticipated and potentially severe costs falling to the employer.

The second area we wanted to address briefly was surplus withdrawal and the minimum contribution rules. We believe that in the absence of plan and trust provisions prohibiting any withdrawal of surplus by the plan's sponsor, such withdrawals should be allowed in certain circumstances. To our mind, those circumstances would of course require that the employer leave in the pension plan sufficient assets to cover 100 per cent of the liabilities of the plan.

We are opposed to any rule that would limit the ability of a pension plan sponsor whose plan is in surplus to take what, I think, many people call a contribution holiday, and thereby allow the yearly cost of pension accruals normally covered by employer contributions to be met through a reduction in the surplus position in the plan.

Plan sponsors with defined benefit plans are forced to make assumptions as to future rates of interest earnings, salary increases and so on when establishing the level of employer contributions. If actual experience turns out to be more favourable than anticipated, surpluses are developed, and this really reflects the fact that the employer contribution level was set at too high a level. It follows logically that a reasonable corrective action is to set future employer contribution rates at a lower level, perhaps even zero, and thereby apply surplus.

The third issue we wish to address concerns uniformity of pension legislation and regulations. We believe very strongly that pension legislation in this country should be uniform from one jurisdiction to another. I am afraid that the complexity and the expense of administering pension plans is going to be increased severely. Increased costs, one way or another, probably mean lower benefits and pension programs. Also, we feel that many of these differences in legislation from province to province are going to discourage people from continuing with the programs they have or, in many cases, organizations that do not have formal pension arrangements are going to be discouraged from putting them in place.

The next point we wanted to raise is on page 10 of our submission, and it has to do with pre-retirement death benefits. Section 49 of the bill allows for the reduction of pre-retirement death benefits by an additional employer-paid benefit, to the extent that this reduction is to be prescribed in regulations. Well, we have seen the draft regulations and they are silent on this point, which effectively nullifies the application of the provision, at least at this point.

Pension plans really are not an appropriate place to be providing death benefits, and if you like, we could comment on that a little bit later. We believe that the type of offset contemplated by the act is desirable, and that an employer should be able to apply any employer-paid group life insurance proceeds to reduce death benefits otherwise payable for active employees under a pension plan on the grounds that there would otherwise be an inefficient

duplication of benefits. We urge that the regulations be expanded to include a prescribed basis for offsetting additional employer-paid benefits in this manner.

Last, on page 11, we would like to comment briefly on section 54 pertaining to discrimination on the basis of marital status which, in effect, provides that pension benefits to individuals retiring in identical circumstances be of equal value irrespective of marital status.

We are opposed to section 54, as worded, for several reasons. Employers should be encouraged to provide for surviving spouses of deceased employees and pensioners, and we would suggest that section 54 discourages employers from doing so.

Second, to comply with this section, many pension plans will need to be amended and in such a way as to introduce discrimination on the basis of marital status in the amount of monthly benefit rather than the value of the benefit. In effect, we would just be replacing one form of discrimination with another. A married person and a single person might have benefits of equal value, but to do so, they might have benefits of differing amounts.

Last, if discrimination by marital status is to be eliminated, does this mean that married and single employees must see their other employee benefits have equal value? As you all know, many companies provide group insurance benefits for dependants of their employees or pay their employees' Ontario health insurance plan premiums. Obviously, there is a clear discrimination by marital status in the value of benefit that is being provided, which we do not think is unfair or illegal. We feel these arrangements should not be prohibited.

Mr. Dowsett: We are open for questions.

Mr. McClellan: Does William M. Mercer Ltd. still act as the actuary for Inco?

Mr. Dowsett: Did not, has not, does not.

Mr. McClellan: Were you involved in the study that was done for Mr. Grossman's Ontario proposals for pension reform of 1984? There were some background studies done.

Mr. McCaw: Yes, I believe we did some background work.

Mr. McClellan: Did you do the work that was published as appendix C, "The Impact of Inflation and Inflation Protection Formulae on Pension Costs"? Was that not the piece of work that Mercer did?

Mr. Dowsett: In connection with that Grossman--

Mr. McClellan: This is the Grossman document.

Mr. Dowsett: Excuse me. What is the name of the piece of work that you were referring to?

Mr. McClellan: It was published as an appendix to Mr. Grossman's report.

Mr. Dowsett: Right.

Mr. McClellan: It is appendix C, entitled "The Impact of Inflation and Inflation Protection Formulae on Pension Costs."

Mr. Dowsett: I believe that is our work.

Mr. McCaw: David Stouffer might have done that work.

Mr. McClellan: I thought it was. It seems to contradict your testimony before the committee. I do not want to be unfair to you. I do not know whether the document was rewritten by Treasury officials or not, but--

Mr. Dowsett: Mr. Chairman, I might comment that I am familiar with this piece of work. William M. Mercer Ltd. was asked to make some calculations. We acted as a resource. We were not writing the papers or presenting the arguments; we were developing statistics.

Our firm has done a lot of work for various government jurisdictions on the impact of inflation protection. We did a major piece of work for the Business Committee on Pension Policy, which is an association of 13 trade associations representing the Canadian Bankers' Association, the Canadian Chamber of Commerce and a whole bunch of industry associations. They hired us to do a lot of investigative work in connection with all aspects of pension reform, including inflation protection, and that piece of work is a little different. Some of it is the same as that work, but we were costing up all kinds of pension reform ideas, and I am not sure I understand how you feel that work is in contradiction with what we say here.

Mr. McClellan: Quite simply because the studies you did, which are published in appendix C, demonstrate that the cost impacts are nowhere near the magnitude of--

Mr. Dowsett: What cost impacts?

Mr. McClellan: --terror of inflation indexation--if I may finish--are nowhere near the level of catastrophe that we have been hearing over the course of the last week and a half. In fact, it was your studies, published in appendix C, summarized in figure C1, table 10, that convinced Mr. Grossman, the Treasurer of the day, to support a policy of mandatory indexation to a level of 60 per cent of the consumer price index. I think I am being factually correct when I say to you it was your studies published in this document that indicated it was well within the range of affordability as determined by a Conservative government to provide inflation indexation.

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Mr. McCaw: Perhaps I could take a stab at answering that. First, I do not have that information in front of me, so you have me at a bit of a disadvantage.

Second, I would suggest that the government of the day's view of what was affordable in the private sector and the private sector's view of what was affordable may not have been completely in tune.

Third, in any costings that are done with respect to inflation protection--and I have heard some of the testimony that has gone on before--first, what level of inflation are we aiming at? I think some of the people who have been before you have assumed it might be something different than 60 per cent. What level of inflation protection are employers currently

providing? It is certainly far more expensive to provide 60 per cent if you are doing nothing right now and a lot less expensive if you are currently providing 30 or 40 per cent. Also--I think this is something none of us can judge--the real cost of inflation protection is really going to depend largely on where inflation goes in future versus what rates of return employers are able to earn on their pension funds.

The cost of inflation protection could be significant; on the other hand, perhaps not. I do not think that is in conflict with what I have said and what we have written here, "Further, requiring pensions to be adjusted in relation to inflation would open the door to unanticipated and potentially severe costs falling on the employer." I do not think any of us can really predict what the long-term cost of inflation protection is going to be.

Mr. McClellan: Is it not possible to amortize arrangements over longer periods of time to cushion some of the short-term impacts?

Mr. McCaw: Certainly it is.

Mr. McClellan: That was certainly one of the recommendations made in appendix C, "Funding arrangements should be made more flexible. Amortization periods for financing experience deficiencies could be lengthened from five to 10 years"--or you can take any number you want.

Mr. McCaw: Absolutely.

Mr. McClellan: So when you hear General Motors or the Ford Motor Co. say if they had to deal with these kinds of upfront costs, they would have to shut down all their plants, surely part of the answer; and I hope part of the presentation you will be making to the Friedland task force, is to talk about funding arrangements and amortization schedules that live in the real world.

Mr. McCaw: As I said at the outset of our comments on inflation protection, we are here to make general comments on it because Bill 170 does not address it. We also said we anticipated making a far more detailed presentation to Mr. Friedland's group.

Mr. McClellan: The historical fact remains that you were able to provide, if I may say so, very valuable advice to one of my political opponents which enabled him to come to the conclusion that mandatory inflation indexation was economically viable. That is still the position the leader of that party holds today.

Mr. McCaw: Let me give you one example of some of the things we did for the Business Committee on Pension Policy, which Mr. Dowsett referred to. Many of the costings we did for the BCPP on inflation protection suggested that depending on circumstances, obviously, inflation protection of some form or another might be implemented in many plans for no more than two or three per cent of payroll. By some people's definition that is affordable, and by other people's definition that is not affordable.

Mr. Dowsett: Could I make another comment? If others have been before you saying that inflation protection should not be mandated because of the costs, we are saying that is one reason but there are other reasons William M. Mercer Ltd. has come to the conclusion that mandating of inflation protection is not appropriate and that we have mentioned before. There are reasons other than just the pure cost reason for our position, such as dissuading people who do not have pension plans at all now from adopting them.

Mr. McClellan: I will finish by reading my favourite sentence from appendix C. Again, I do not know whether William Mercer wrote it or not. I kind of hope you did. "By mandating inflation protection, pension reform recognizes that a share of the inflation component belongs to plan members and should be used, regularly and predictably, to escalate their benefits."

Mr. Dowsett: We did not write that.

Mr. McClellan: I am sure you do not disagree with it.

Mr. Dowsett: We did not write it.

Mr. Lane: I am concerned about the question Mr. McClellan was discussing with you. We have had some presentations that indicated 60 per cent was probably actuarially viable, and having listened to the last presentation, we find out we have a lot of elderly people in pretty poor circumstances. Statistics say we are going to have a great many more elderly people in the future than we have had in the past for various reasons, people living longer and so on. What is this going to do for these people if there is no indexing at all? Are they going to be left with what \$100 would buy 10 years ago but would not buy today?

Mr. McCaw: When I say this, in large part I am speaking from personal experience, although I think there are statistics that would substantiate this to a great extent. Most major Canadian corporations with a private pension plan do provide cost-of-living adjustments to their pensioners. Of those who are doing it, most of them do it in the 50 per cent to 60 per cent range. You certainly could not say that 10 years ago and you probably could not say that anybody, other than government, was doing it 15 years ago.

I think there has been a change in the private system in the perception of pensions and the importance of providing inflation protection. What employers were working at very hard 10 years ago was getting up the basic benefit so that people were retiring on a good, solid level of pension income after they put in a career with an employer. That is where most of the money was going.

Arguably, if we had it to do all over again, as consultants, as employers, we could argue that perhaps the benefit level at age 65 should not have moved up quite as rapidly as it did as people moved towards two per cent final average pension plans, but rather that the benefit level should have stayed a little lower and inflation protection and other ancillaries that we have talked about today might well have been introduced. That did not happen. The movement was to provide the good benefit at age 65 for the long-service employee.

There is a shift, and I think employers are now looking at the inflation issue and have been for the last 10 years. Many more of them are doing it and many more will be doing it tomorrow, voluntarily.

Mr. Lane: So you think they are more likely to do it voluntarily if it is not mandatory?

Mr. McCaw: My concern with the mandatory, as Mr. Dowsett said, is not just the cost. I am concerned that the private pension system is going to see people leaving it if we mandate it, and we certainly are not going to see new employers coming to it if we have mandatory inflation protection. That is my fear.

Mr. Lane: Thank you. On page 10 of your brief, you mentioned pre-retirement death benefits and that you would come back to that and make some further comments. Do you have further comments you wish to make?

Mr. McCaw: Very quickly, our view of pre-retirement death benefits is that they do not go on the pension plans. Very briefly as to why not, if I am a 30-year-old and I have been in your pension plan one year, my pre-retirement death benefit is based on my one year of service. If I am a 60-year-old and I have been in your pension plan 30 years, my pre-retirement death benefit is based on my 30 years of service. The 60-year-old is getting a death benefit that is at least 30 times that of the 30-year-old. Arguably, the 30-year-old has the young children and the big mortgage and the 60-year-old has kids through school and the mortgage paid for.

Pension plans are not a good way of providing death benefits. That is why most employers provide their death benefits through group insurance programs.

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Mr. McClellan: One quick question. When William M. Mercer appears before the Friedland task force, will you be providing it with ways and means of implementing mandatory indexation or will you be trying to make a case to the task force against mandatory indexation and trying to persuade it to recommend against its implementation?

Mr. McCaw: Probably the latter. We have not decided how we are going to put it together. We might go so far as to make all our arguments as to why we do not think it should be mandatory but if, having heard the wisdom of our words, the government were to decide otherwise, we might also include something to say that, although we oppose it, if it were to happen, this is how we think it should happen and why.

Mr. McClellan: You think the task force may recommend against adoption?

Mr. McCaw: I cannot comment on that. I did not understand that was in its terms of reference, though.

Mr. McClellan: Neither did we, until recently.

Mr. Chairman: Thank you very much, gentlemen.

We have with us today Mr. Moorman of the Ottawa-Ottawa Carleton Pensioners Association. He is going an hour early. We appreciate that.

Please proceed.

OTTAWA-OTTAWA CARLETON PENSIONERS ASSOCIATION

Mr. Moorman: Thank you. My name is James Moorman. I am the president of the Ottawa-Ottawa Carleton Pensioners Association. My colleague is Art Campbell, who is already well known to you. Although we are not in the same organization, we nevertheless have had numerous discussions and have similar views on the whole question of pension benefits. Mr. Campbell is well known to many of the organizations in Ottawa, has written a lot of material and reflects a lot of the views of the retirees, who are my principal constituents.

The Ottawa-Ottawa Carleton Pensioners Association represents approximately 1,200 former employees of the city of Ottawa and the regional municipality of Ottawa-Carleton which, as you will recall, is a creation of the government itself. Approximately 850 members of our association receive a pension benefit from the city of Ottawa superannuation fund, which I will refer to later on as the COSF. The others receive a pension benefit from the Ontario municipal employees retirement system, OMERS.

Our association is represented on the COSF board of trustees by its president, who happens to be myself for this year. I would add one thing: the COSF is a so-called private pension plan that was closed out for new members on July 1, 1965.

Our concern with the Pension Benefits Act relates to those parts of Bill 170 that deal with four items that I have here and that I basically hope to cover: first, the definition of "member" and "former member" in section 1; second, the makeup of the board of trustees in clause 8(1)(e); I will quote these sections later on in the text; third, representation on the board of trustees by pensioners under subsection 8(2); and, of course, the main preoccupation of this committee and the people who have contributed to it, the need for inflation protection in section 40, etc.

Our first point is to deal with "member" and "former member." In Bill 170, section 1 reads in part as follows, and this quote I take right out of Bill 170, "'Former member' means a person who has terminated employment or membership in a pension plan and is in receipt of a pension payable from the pension fund" and "'member' means a member of the pension plan."

It is commonly acknowledged that an employee participates in a specific pension plan by contributing a portion of his income to the pension fund, whereby he can expect upon retirement to receive a pension under the conditions specified in the pension plan. His essential claim to this pension benefit is his contribution made over the years of his employment.

If an employee contributes six per cent to eight per cent of his earnings over 30 to 35 years to his pension plan, he will have made a larger cash investment, by and large, in his plan than in any other form of investment. We are suggesting by this statement that if you take six per cent to eight per cent of a guy's pay for 30 to 40 years--one gentleman had 44 years in our pension plan and the payment contributions end at 35 years--that guy is making an investment in his pension plan greater than he will have made on the house he bought in the 1950s or 1960s, in fact in the 1970s in some occasions. It is a greater cash investment than he ever made in any vehicle, and I am talking about the working people, I am not talking about companies, obviously. I am talking about your average pensioner today. This makes him a member of the pension plan. This contribution, which is in the thousands of dollars in all cases, makes him a member of the pension plan and to no less extent after his retirement, his investment remains in the fund.


My investment is in the city of Ottawa superannuation fund. The only thing that has changed is that my status has changed to that of a pensioner. That is all. I think to myself, how can I be a former member? A former member, even by the wording of the section, has the connotation of being deceased. I resent that. I resent it terribly. This is an attitude that has been engendered by employers and I must say by union organizations.

"Former member" means a former employee or a former member of a union group. We are former nothing, we are pensioners, so our status should be that of a pensioner. We recommend that section 1 include a definition of "pensioner." I am using the words already there for your so-called former member. "'Pensioner'...is in receipt of a pension payable from the pension

fund." I do not know why anybody is afraid or even in some cases refuses to define the word "pensioner." The purpose of this whole business is to provide a benefit, and as such you are contributing something. It is the pensioner who is getting the money. We suggest, furthermore, that reference to "former member" be deleted from the definition section. If you include the definition of "pensioner," you do not need to talk about this anomaly called "former member" with the connotation that he is deceased.

Second, section 8 reads in part as follows, "a board of trustees...of whom at least one half are representatives of members of the multi-employer pension plan."

The COSF--the pension plan I happen to belong to--has been a closed fund since July 1, 1965, and there will be no members. A closed fund means that no new people came in since July 1, 1965. The COSF has been closed since 1965,



and there will be no members as currently defined in Bill 170 on the COSF board of trustees by the year 2000, because, simply put, by the year 2000 there will no more employees entitled to a pension who are making the contributions. Add 35 years to 1965; that brings you to the year 2000. You make a contribution to that plan for only the first 35 years of employment. By the year 2000, there will be no members.

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By that date, all remaining employees who are entitled to a city of Ottawa superannuation fund pension will have completed their 35 years' contributions to the plan and will be waiting for their deferred pensions at their retirement date. In your present situation, you call somebody who is waiting for a deferred pension a former member. An employee can have \$30,000, \$40,000, \$50,000 in the fund, he is waiting for his pension, and you call him a former member. He is not. He is still an employee and he can still keep on making contributions. By your definition, you are hitting him as if he practically has one foot in the grave.

It is assumed actuarially that the COSF will continue to the year 2040. Just figure out how old the people are now. You will hear about the actuaries, of course. They figure they will all be dead by the year 2040 but not before. We will be operating, as I am saying here in the next page, page 3, between the year 2000, when there are no more contributors, and the year 2040, when the last guy dies. That is to say, in the last 40 years of our fund, there will be no representatives of membership on the board of trustees, as provided for in this section. You have prevented members from getting on this board.

We recommend that section 8 be amended as follows, "a board of trustees...of whom at least one half are representatives of members and/or pensioners."

If you would be so good as to include in Bill 170 a definition of "pensioners," then when according to your definition of "members" there are none left in our group, at least one group other than the employer can be represented on the board of trustees of our fund.

Section 8 reads in part, "a board of trustees...may include a representative or representatives of persons who are receiving pensions."

The undeniable, ultimate objective of a pension plan is to provide a pension benefit to employees who qualify upon retirement. There are three distinct groups of persons in a defined pension plan. They are as follows: the employer, obviously. No doubt you will hear the employer's point of view all the way through. You always will. You always have and you always will. The employees who contribute a portion of their earnings are the second group. That is a different group than the employer. The third group are those who receive a pension, the pensioners.

I speak from experience as a pensioner, I speak from experience as an employee and I speak from experience as a former employer. I assure you, if this concept is put to the members of this committee, it is nevertheless absolutely true. The perspective and, therefore, the objectivity of these three groups is different, one from the other. The board of trustees, being the administrator of a fund as defined in the Pension Benefits Act, will not have the balanced perspective required to administer the fund properly without direct input from representatives of these three personnel components of the pension plan.

Maybe all you fellows are too young. If any of you have sat in on a board of trustees meeting, you will recognize without any introduction at all who the employer is or who his representative is. You will very quickly recognize who the union representative is, without any labels--you do not need any labels or any introductions--and you will find out who is speaking for the pensioner.

We are saying, as pensioners and former union members--I was the president of the first Canadian Union of Public Employees local of supervisors in the city of Ottawa--that union representatives talk about pension issues. There is no question about that and nobody can deny that. But I want to tell you that when it comes down to dividing a surplus, splitting the bucks, nobody speaks except for his own group. The employer speaks for the employer and he wants back some of those advances he had. The employees want early retirement, buy-back of pensionable time, service time. The list is as long as your arm.

Unless there is a pension representative, there is nobody who says, "What about all those poor beggars out there who do not have a nickel?" I am saying without any equivocation, without any hesitancy at all, that you must provide for a pensioner representative on the administrative unit, especially on a committee and most especially if it is a board of trustees, which happens to be the case in the city of Ottawa superannuation fund.

We recommend under section 8, at the bottom of page 3, that the administrator of the pension plan shall include a representative or representatives of persons who are receiving pensions under the pension plan.

I have made three very easy amendments. I do not like the idea, as some people are prepared to suggest, "After all, you have your money in this darn thing; why would you not be satisfied to be continued as a member?" I am saying there is a difference between the employer, the employee and the pensioner. That distinction must be preserved, and one way to do it is by definition. I may be part of the membership of something. You can use the word "membership" in a general term, but I suggest there is a difference and this legislation can enable us to draw that distinction.

My fourth point is on the business of this inflation protection. It is on page 4, sections 40 to 55 under the heading of "Benefits." I was intrigued by the way the authors of this legislation set out their headings. They put it in under the heading "Benefits." These sections contain every kind of primary and conditional benefit which anyone could think of except the most important: the need for inflation protection.

Personally, I found it an education to read this thing. I did not realize there was so much, although, unlike a lot of other people, I did not start thinking about my pension until about six months before I decided to retire. I am still not 65, touch wood. Nevertheless, like a lot of people, I was late in thinking about pensions. I learned a lot about this thing, but it strikes me that they are going around one issue.

Maybe the reason you are getting so much reaction on inflation protection is that there seems to be a hesitancy. With all due respect to the minister and to all the statements that have been made, the general reaction I get, and I see it on the television--I see you fellows on TV; I notice they had the cameras in here the other day; they do not have them here now--and in the newspapers, is that all the argument is around inflation protection.

It is a fact. I would not attempt to flood you with any figures. You

have enough of them right now. I honestly have to sympathize with the members of the committee, the political representatives. How you are going to get all this briefly, I do not know.

It is well known that there is a great divergence of opinion even within this committee. Nevertheless, I make these suggestions. It is a fact that inflation increases the revenue and capital assets of a pension fund. The history of our fund clearly indicates that. We had projections on capital asset growth starting back in 1971. They said that in the year 1986 there would be \$85 million in the city of Ottawa superannuation fund. They made these calculations in 1971 and at times in 1985 it was \$159 million. They were short by about 100 per cent. In other words, 100 per cent growth.

We have some pretty smart guys in the city of Ottawa. You are not going to give us too much credit for being smart, down here in this part of the country, but there are some pretty smart guys in the city of Ottawa. But they did not admit they were so hot at the administration of this fund that they manipulated a 100 per cent increase in the assets over what was projected. No way.

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They said, in 1986 there would be only \$90 million in the fund; the audited statement is going to show \$163 million. I do not hesitate to talk and make the statement, and I am going to make it again: it is a fact that inflation increases the revenue and capital assets of a pension fund but decreases the purchasing power of a fixed pension. I am not a mathematician, I am not an actuary, I am not an accountant, and I failed in economics at Queen's University, but I am making this statement and nobody can deny it--nobody in this room and nobody else--the purchasing power of a fixed pension decreases.

Can pension plans afford to consider inflation protection? This is the big issue. Even the wealthiest corporations in this country appear here and they say, "Like hell; we are going to move to Quebec." Can they afford it? Obviously, this will depend upon the individual plan and will vary from year to year.

Our own history of the COSF is a good example: it will vary from year to year. However, surpluses are being withdrawn because it is alleged that projected liabilities are covered. You come out with this fancy thing. My predecessors right here at this desk said, "It is okay to withdraw, as long as everything is covered." But at what level are projected pension liabilities calculated, which allow these surpluses?

The lower the level of pension liabilities, the higher will be the surpluses. You do not even need to be a mathematician to figure that one out. For example, in the COSF, 50 per cent of the pensioners who were former employees of the city and regional municipal governments--this does not include the firemen and the policemen; the firemen and the policemen have been doing pretty well these last 10 years, especially in wages, which means you get a higher pension; I am talking about the group that has not been doing so well--50 per cent of these former employees receive less than \$6,000 a year annually from the COSF, and 17 per cent of them receive less than \$3,000.

Here is the shocker as far as we are concerned. As a consequence, 77 per cent of the spouses of the deceased members in the above group receive less than \$3,000, and 33 per cent of these spouses receive less than \$1,000 annually.

I was born and brought up in Ottawa and have lived there most of my life, and I looked down the list of people in our audited statement who receive a pension. I have lived in Ottawa South, I have lived in Ottawa East, I have lived in Ottawa West and, at present, I live in the far west end of the city. I have been associated with many things. I come from a large family, with a lot of friends and relatives. I see some of the names on those lists that are getting \$1,000 a year; \$2,500 a year, a former fire chief.

Surpluses could and should be used for the benefit of retirees who have lost purchasing power. That is our statement. We recommend that this legislative committee consider the report of the Employees and Pensioners Committee on Inflation Compensation, prepared by my colleague Arthur Campbell. This report suggests that the Pension Benefits Act should include something for the retirees, and let the task force on inflation protection deal with future pension recipients.

Pensions are not a gift from the employer. I have not heard anybody around here say that lately, but you are liable to hear that. Certainly, the inference is there. If you withdraw your support, it means that you give your support. The implication is there.

Pensioners should not be considered as receiving something for which their contribution is insignificant, either by the employers or the Pension Commission of Ontario. An employer can do the following when there is a surplus: He can withdraw it. I notice, minister, you have stopped that for a little while. Thank you.

He can reduce his contributions, and this position is being advocated. He can provide incentive for earlier retirement. Those of us who have been with the same employer for an awfully long time know this is one way to sweeten the pot to get rid of these senior management people who cannot do their job properly any more, and they are the ones who get the big pensions. Or the employer can raise the level of pensions of current retirees. It takes no imagination to recognize the most desirable of these options as far as the employer is concerned.

In the case of the COSF, although our group is administered by a board of trustees that includes representatives of employees and pensioners in a minority position on the board--and you know what that means; we do not get the votes and support we want--the evidence is clear as to which option has been exercised up to the present time. Since 1931 when our fund was established, there has been only one occasion, 1985, when the position of the pensioners was improved. Clearly pensioners have no bargaining power since they have nothing to trade off. Pensioners need protection.

The Pension Benefits Act is the only vehicle that can provide that protection. We recommend that the Pension Benefits Act be amended to include a section that recognizes the need for inflation protection. We are only saying that we are looking, hopefully, for a commitment. If you want a suggestion, it could be the cost of living, the consumer price index.

We therefore respectfully submit this on behalf of the pensioners' association. I believe I have a couple of minutes left.

Mr. Chairman: Unless you want some questions. Are there any questions?

Hon. Mr. Kwinter: Mr. Moorman, I want to tell you how much I enjoyed

your presentation; I really did. This is just a technical matter. I want to address your question about the definition and deal with it. You feel that we should take out "former member" and put "pensioner" in?

Mr. Moorman: Correct.

Hon. Mr. Kwinter: The definitions are not a statement of policy. What the definitions do is refer to things that are in the act. To put "pensioner" in the definition and not mention it anywhere in the act is of no consequence. It does not mean anything. What we would have to do is start putting in references to "pensioner" so that there would be a reason to have a definition for pensioner.

Mr. Moorman: Correct.

Hon. Mr. Kwinter: The other thing I would like to mention is that when you say to delete "former member," there really is a provision and there really is such a thing as a former member, and that is a person who belongs to a company, is enrolled in a pension plan and then withdraws before it is vested and goes to another place or does whatever he does and is no longer part of that pension plan. He is a former member. He may have some benefits coming to him out of it or he may take all his money out because it has not been vested. He takes his money out. He gets none of the sponsor's portion, but he is a former member and there is a provision for that.

Mr. Moorman: Can I answer?

Hon. Mr. Kwinter: Yes.

Mr. Moorman: On your first point with respect to definition of "pensioner," obviously, if the only place the word "pensioner" is going to appear in the legislation is in the definition section, section 1, then obviously you do not need it. You would not put in a definition for any words that are not being used. I appreciate what you are saying. The reason I suggest it be in section 1 is because I am suggesting that it also be read into section 8 that the board of trustees should have members and pensioners. That is the reason I want a definition of "pensioner," because according to the existing definition of member, it does not include pensioner. It does not provide for a pensioner being on a board of trustees in any capacity whatsoever.

I am saying it is essential that you have pensioners involved in the administration, especially if it is the committee you refer to here or the board of trustees. Now then, I prefer the word "pensioner" definition rather than "former member," because I prefer it to read: "representatives of members and/or pensioners" rather than "representatives of members and/or former members."

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I also suggest the word "pensioner" would be in the text in section 8 with respect to being on this board of trustees; subsection 8(2), "the administrator...shall." I am saying that according to this legislation it should be compulsory, mandatory that pensioners be on the board of trustees or this could be reworded to include that committee where you have an administrator acting as a committee.

Perhaps there is a place in the legislation--I thought about it at the

time--for a deferred pensioner. That is the only other category you have to take care of. You have to take care of the pensioner, and I think I have elaborated on that sufficiently. Nevertheless, as you say, there is the question of a deferred pension. People who have worked for 15 years and have their pension vested will go to work somewhere else, in private industry mostly, because if they can go to any other government body their pension can be transferred, as you know.

For those people who cannot transfer their pensions--you are always going to have this--there is a need for a definition of "deferred pensioner." You will have a "member" who is really an employee, making a contribution. You will have a definition for "pensioner" and I suggest that you need a definition for "deferred pensioner."

In our fund, although there are some 1,450 people in the fund, a total of contributors, pensioners and spouses, we have about 16 people in the category you are talking about. I would not suggest it is onerous at all to make changes for pensioner and deferred pensioner.

As far as the last category you mentioned is concerned, the fellow who has taken his pension out of the fund, who has separated himself actuarially, financially, pension-wise entirely from the fund, I do not see any point in giving a definition to that guy. We do not need to have him--

Hon. Mr. Kwinter: The reason why you need a definition is if you have someone who is contemplating doing that and wants to know his rights and what he can do, he has to go to the act. He has to ask, "As a former member, what can I do and what provisions are made?" That was the reason.

I take all of the points you make and I am just--

Mr. Moorman: I understand, but would you suggest that if a guy moves to some other form of employment where there is no pension plan--I am thinking specifically of several people in our case in Ottawa. If decides to withdraw his money entirely from the fund, he has the option to do so. He has made a contribution. He has taken his money out. He has no longer any claim on the fund. Is there a need to suggest that person be categorized either by definition or reference in any way whatsoever? He has no money left

Hon. Mr. Kwinter: The point is that until he makes that determination, he is a member.

Mr. Moorman: Correct.

Hon. Mr. Kwinter: Then he decides: "I am going. I wonder what my rights are. What are my rights? Can I take the money out? Can I do all of these things? Do I have any rights as a former member?" That is what it deals with. Again, it is not a matter of putting him into the category just so you can have a catalogue of people's positions. If there is no reference to a former member, there is no need to have a definition of a former member. But there is a reference in the act to a former member who is in that category, which gives him the right to do whatever he wants to do. That is the reason for the definition.

Mr. Moorman: My preference is you call that guy a pensioner.

Mr. Chairman: Anything else? Any questions?

Mr. Guindon: Just one small question: In your brief, I understand that you feel the employer and the union are not enough to represent the needs of the pensioners.

Mr. Moorman: Absolutely.

Mr. Chairman: One minute to sum up, sir.

Mr. Moorman: I appreciate your time limit, Mr. Chairman. I think that my first three points--the pensioner being able to get on that board of trustees, being involved in the administration of the fund--are adequately dealt with in here. In my estimation, these are minor changes. They will clarify the thing and put the pension in place. More and more pensioners, believe me, are reading this thing. I bet you 10 to one, hardly a pensioner ever read the previous Pension Benefits Act. Now they are reading it in large numbers.

Let me elaborate on the question of inflation protection. I would say this is a very confusing question for a lot of people. Let me tell you what we are trying to do in our fund in Ottawa. Since 1972, the corporation of the city of Ottawa, that is the municipal council, has been giving a supplementation to the low-paid pensioners in the COSF. This hit a maximum of about \$450,000 about 1983, and of course it is going down for two reasons.

People are dying; the oldtimers are dying off. It runs in the low pensions--I do not think they are starving to death; they are just dying. I do not think the fund would take responsibility for sustaining life. Nevertheless, it is a significant thing that the oldtimers are dying off. It is a reality that these \$1,000-a-year pensioners are dying off.

The second thing is, of course, that the supplementation--I do not want to get into too many statistics in this stuff--given by the city is the equivalent in the case of pensioners of between what they get from the fund and what they get from the CPP. As you know, the Canada pension plan payments were not that significant prior to, say, the middle 1970s. Look down the list there and you will see it. I know these figure: They paid nothing in 1966; in 1967, they paid \$393 for the year. It has been increasing, of course; it is up around \$5,000 now. Those guys who went into retirement prior to the 1970s got a very low CPP, and the ones who retired prior to 1967 got nothing.

The city makes up this difference and it did it arbitrarily. They never sought the opinions of the pensioners; never. They did not bother going near the union groups because our employer has always taken the position, and there is some validity in it, that when it comes down to dividing the pie, the union groups cannot be trusted to deal on behalf of the pensioners. This is our history.

We have been making the pitch to the city council for supplementation, as it is called, in November each year. In November 1986, we made the pitch again for supplementation to the pensioners. The members of the city council, essentially led by Alderman Darrell Kent, asked, "Why do not the pensioners get together with the city and see how much money a pensioner gets, then see what is needed to make it up?"

We thought this was a novel consideration on two points. One is that the pensioners for the first time were invited by the Ottawa city council to participate in this discussion about supplementation, which shows a change in attitude.

The fellow who was sitting here ahead of me said that employers are beginning to recognize the need to help their pensioners. Maybe we will accept it--pensioners will accept it--and grudgingly from the gentleman who sat here ahead of me and his firm--I will not name names--but it is a fact; they are beginning to recognize it and it is being reflected.

They said, "Get the old age pension. Get the Canada pension plan and the amount of money that comes from the COSF, the pension plan. Add that up. What would it cost to make up the difference to, say, \$11,000 a year for pensioners and \$9,000 a year for the spouses?". We are doing that research now. It shows a change in attitude. I think it is very encouraging myself.

There is nobody in the world--I do not care what your political persuasion is--who is going to say this thing will solve everybody's problems. If you put in two times inflation protection, you do not solve it.

We are going bankrupt as a country pretty fast as it is by doling out money to everybody. We are saying, in this setup, let us look at what it costs. We are working together to analyse, to do some research to see what can be done. We think it can be done. The city will not have to increase its supplementation all that much. The pension fund, which has had surpluses for the past four or five years despite a couple of bad investments that we made in western Canada--I do not know if any of you guys are from Alberta. There is nobody from Alberta here. We lost some money out there in Alberta, a couple of million dollars. Despite that and the write-off of that, we think this can be done.

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It would be encouraging to us if some positive commitment were given by this committee, the department or somebody that we are going to try to get some kind of real floor to this Pension Benefits Act. This act has a lot to contribute and there is going to be some kind of statement in there; inflation protection or tying it up to something or other, half the cost-of-living index or something. Make a suggestion. You have a lot of suggestions in here. Legislation is pretty cut-and-dried stuff, but you can put a bit of a motherhood deal in here. It has been done many times before.

Mr. Chairman: Thank you. I do not know whether we can give you any messages to take back to your group in Ottawa except that they sent a forceful representative.

Mr. Moorman: Thank you, sir.

Mr. Chairman: The next presentation is from the Trustees of Labourers' Pension Fund of Central and Eastern Canada; Mr. Rivers and others, some of whom we have seen before. Please proceed at your convenience and introduce the contingent.

TRUSTEES OF LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA

Mr. Rivers: I am Bill Rivers, Martin E. Segal Co. Ltd., a consultant to the labourers' pension fund of central and eastern Canada. On my right is Raymond Koskie with the firm Koskie and Minsky. He is legal counsel to the same pension fund. On my far right is Onorio D'Agostini. Onorio is the administrator of the labourers' pension fund of central and eastern Canada.

We are here representing the board of trustees of the labourers' pension

fund. I believe we have distributed a brief in a blue cover that we will cover with you today, in some parts briefly and in other parts rather thoroughly. The brief has been divided into legal-related issues and benefit-related issues of Bill 170, and we will cover them accordingly.

By way of background, the labourers' pension fund of central and eastern Canada covers approximately 100,000 labourers working in the construction industry throughout Ontario and all of eastern Canada--the maritime provinces. There are about 32,000 active workers. It covers or involves 21 local unions of the Labourers' International Union of North America. There are 16 of those locals in Ontario and there are five in eastern Canada.

The pension fund is designed as a multi-employer pension plan. Within that concept, there are some 2,300 employers throughout Ontario and eastern Canada contributing to the pension fund in any one month. The firm's records probably have more than 6,000 employers who from time to time, depending on their work, will make contributions to the pension fund.

The plan is operated by a five-person board of trustees. Mr. D'Agostini is the administrator, not in the way it is used in the bill, but rather as the person responsible for the administration of all the records, which, with the number of participants and the number of employers and the number of different local unions, you can appreciate is a rather large record-keeping responsibility.

As I mentioned, the pension fund is designed as a multi-employer pension plan, of which there are hundreds operating in Canada. We believe they are unique and very different from the usual pension plan found in the private sector, in that there are so many employers and in that the employees covered by these programs are highly mobile. They move from employer to employer; they may work for an employer for one day, one month or 10 years, depending on the nature of the work and their own desires. As a result of their mobility and the type of work, they are faced with unique sets of circumstances.

We think the committee should take special recognition of multi-employer plans and how they operate and recognize some of the special needs. There are two things that we will not talk that much about today because of the nature of multi-employer plans. One is the surplus withdrawal and the other is mandatory inflation protection.

The contributions that go into the trust fund for the labourers' fund originate from a collective bargaining agreement. Those contributions are fixed by agreement, and once they are made to the fund, they stay in the fund. They are never taken out of the fund other than in the form of pension payments and, therefore, all the actual gains that are created over the years are used to improve the benefits of the beneficiaries of these funds. Surplus withdrawal simply is not an issue for these types of plans.

Mandatory inflation protection is also taken care of in the sense that any plan surpluses can be, and in most instances are, used by the trustees to improve not only the benefits for the actives but also the benefits for the retirees. To the extent that any mandatory inflation protection would be introduced, it would not be a problem for a multi-employer plan to index the pensions to the extent that the surpluses were available.

We would suggest, however, that any mandatory inflation protection in excess of the available surplus would be a problem for a multi-employer plan. Because of the fixed negotiations under the collective bargaining agreements,

there really is no way for these funds to get additional money over and above the gains that generate themselves, other than to go back to the bargaining table or whatever, but that would present a problem.

With that background, not only to the fund we are representing today but also to the multi-employer or MEPP industry, I will turn the microphone over to Ray Koskie to talk to you about the legal-related issues we would like to present today.

Mr. Koskie: Mr. McClellan was quite proper to point out yesterday how refreshing it was that we were not coming here with the same sort of hysteria that some of the others have come with in respect to the question of surplus and inflation protection. As Mr. Rivers points out, those problems do not have the same degree of importance because of the unique aspect of MEPPs, and MEPPs are such that we have dealt with them ourselves.

Because MEPPs are so unique, we feel the bill has to deal with them in a somewhat clearer fashion. We certainly appreciate that there have been improvements in the area of MEPPs in Bill 170 compared to the previous draft bill. However, we feel, as I will point out shortly, there are still some very important areas that need some clarification from a legal point of view, the first of which is the definition of a MEPP.

As I pointed out to you yesterday, and I think most of the committee people here today were here yesterday with one or two exceptions, tab I of our brief mentions unanimous recommendations that were made by a special subcommittee appointed by the Pension Commission of Ontario in 1984.

That committee was established to advise the commission and the minister on the unique aspects of multi-employer plans which are not dealt with at all in the present act. You have to appreciate that these recommendations are not one-sided, in that the subcommittee consisted of representatives of all interested aspects of the MEPP industry: trustees, employer, union and professional advisers.

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The pension commission accepted these recommendations, but they seem to have gone astray after they were introduced to the Canadian Association of Pension Supervisory Authorities. We did recommend that the definition of a MEPP be limited to one which arises out of a collective agreement. There is a historical reason for that. MEPPs were originally established because of a collective agreement, and they should be limited only to those particular plans.

The present proposed definition does not make any reference to the collective agreement, but rather refers to any agreement, statute or bylaw under which a pension plan has originated. We have proposed a compromise to that on page 4 of our brief, where we suggest that the reference be made to a pension plan established "by reason of a collective agreement, participation agreement, any other agreement, statute or municipal bylaw." In other words, we have incorporated all aspects of all areas in which a MEPP may arise. That would require an amendment to clause 8(1)(e) by deleting the words "established pursuant to a collective agreement."

The net result of this proposal is that all MEPPs, regardless of how they were created, by collective agreement, statute, bylaws or whatever, must have at least 50 per cent representation from employees on the board of

trustees. The thrust of our recommendation is that they should all be treated the same. There should not be a distinction between MEPPs arising out of collective agreements and MEPPs arising out of statutes, bylaws or whatever.

The next crucial area deals with conflict of interest and we discuss that on page 7. First of all, we welcome the proposal by the minister with respect to the standard of care, the duty of care imposed upon administrators of pension plans. It is a high standard of care, one we think is in the best public interest and one to which our clients have no difficulty agreeing.

However, there is reference to, in effect, a blanket prohibition of trustees or administrators engaging in transactions which may involve a conflict of interest. On the surface, it would be almost like arguing against motherhood to say that is not correct. We agree with the principle, but there is a practical effect to that absolute prohibition. The administration of these plans will be stymied as a result of that absolute prohibition, because everybody involved in the administration, whether it be a single-employer plan or a MEPP, comes there with a built-in conflict of interest.

Let me explain. In a multi-employer plan, if you have trustees who are appointed by the union or trustees who are appointed by employers, they wear two hats. The employer trustees, before they come into the board of trustees, are trying to represent the interests of the employers who appointed them. The union trustees are usually officers of the union and, of course, they have political concerns to keep their members happy.

The employers want to make sure that they do not end up contributing to the plan any more than they have to. Yet, as trustees, they are there to provide the greatest amount of benefits for the beneficiaries. They are being pulled in two different directions and they are, therefore, presented with a conflict of interest. They are always concerned about their employer's interest and they are always concerned about the beneficiaries. These are typical conflicts of interest.

For example, a multi-employer pension plan board of trustees will enter into a cost-sharing agreement with a union in the area of delinquencies. Because contributions are not paid in time, what the trustees may do is say to the participating union, "You go out and collect the contributions for us, and we will pay the union a certain amount of money for the work it has done in collecting those contributions on behalf of the pension plan."

There is a conflict of interest there, because the same union officers who are negotiating this cost-sharing agreement as union officers are also on the other side of the table negotiating as trustees of the MEPP. That is a typical example of the inherent, built-in conflicts of interest which the trustees of MEPPs take with them to the board of trustees. If you accept the legislation at its face value, the trustees could not make any decisions at all, because they would all involve some sort of conflict of interest. There has to be an escape from that, without destroying the principle behind the conflict-of-interest provision.

As I may have mentioned to you yesterday, this has been recognized in the United States under the Employee Retirement Income Security Act, with which you are familiar. I point this out on page 8 of our brief. That legislation acknowledges that there are, obviously, conflicts of interest. On the other hand, there is a procedure whereby transactions and individuals involved in a conflict of interest can be exempted from this absolute prohibition, but they have to meet certain criteria in order to be exempted.

In Ontario, that could be supervised by the superintendent of pensions, who would establish a procedure for that.

Without that procedure, in my respectful submission, not only the administration of MEPPs would be stymied but also that of single-employer plans. I think you have to give very serious consideration to that; otherwise, we will have a serious problem with respect to the ongoing, day-to-day administration of these plans.

The next aspect I want to talk about, on page 11, deals with delinquent contributions. As you can appreciate, with a plan of this size--and the labourers' pension plan is typical of many of the large MEPPs in Ontario, where you have literally thousands of employers who are contributing on a monthly basis to these plans--the delinquency problem, particularly in the building trades industry, is very serious.

In the subcommittee which advised the pension commission, we agreed, as tab I will indicate, that the only practical, effective way to get around the problem of delinquencies was to have a speedy arbitration process that the trustees could resort to.

Notwithstanding that unanimous recommendation, we do not see that in either the draft bill or Bill 170. Instead, what we have is the bill saying the trustees can sue in court. I pointed out yesterday that does not advance the situation at all. It involves more expense, more delay and it is not in the best public interest. We ask you, please, to seriously consider that as well.

The other point we want to talk about, on page 15, deals with worker representation on the Pension Commission of Ontario. As you know, the role of the pension commission under Bill 170 will be greatly increased over the role it has now. The PCO must hold hearings and make decisions after weighing the evidence, and it will be called upon to make very important decisions on pension issues.

The difficulty is that with the present setup of the commission, the commission can sit in panels of three. Of course, with the present makeup of that commission, it is possible that there can be a panel in which there is no worker representation. At the present time, out of the nine members, there are only two representative of the interests of workers.

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Since the workers should have at least an equal say as to where their pension money is going and how it shall be regulated, we feel the situation is analogous to the makeup of the Ontario Labour Relations Board in dealing with labour matters; therefore, we see no reason why the PCO should not be set up in a manner similar to that of the OLRB. That is, in effect, the nub of our suggestion. We feel the commission should be composed of an equal number of employer and employee representatives, as well as neutral persons. Otherwise, the interests of workers under the present setup are clearly in jeopardy.

In fact, I think many of the problems dealing with the surplus situation that we are all familiar with perhaps could have been avoided, to some extent, had there been a greater balance in the setup of the commission. Of course, as you know, when all the surplus problems went on, only one of the nine members of the commission was representative of the interests of workers and could therefore be very easily outvoted on any issue which affected the workers.

The last issue I want to deal with--and we did talk about this yesterday to some extent, but I think it deserves underscoring--is portability. I talk about that on page 10 of our brief. Simply put, I think section 43 of the bill does not reflect the operation of a MEPP. The whole clamour about portability really arose out of the single-employer plan, where an employee would quit working for a particular employer who had a pension plan, would go to work for some other employer in some other industry or whatever and could not take with him or her the commuted value of pensions.

For a single-employer plan, section 43 certainly makes a lot of sense, but, in my respectful submission, it does not make any sense in connection with MEPPs. As Mr. Rivers pointed out, particularly in the labourers' pension plan, a beneficiary can work for several employers during one year. That is the nature of the construction industry, as you know. The employees go where the work is, and more often than not, that means having to work for different employers during the course of the year. But, in the main, all those employers are contributing to the same MEPP, to a single MEPP.

If one reads section 43 literally, which one has to, it would mean that upon leaving one employer, an employee could knock on the door of the pension fund and say, "I want the commuted value of my pension to be transferred to a registered retirement savings plan." I do not think that was the intention in so far as MEPPs are concerned, because the employee is protected when he leaves one employer and goes to work for another employer. His pension is protected. The contributions continue to come in, and that employee continues to accumulate pension credits.

In the MEPP situation, the problem is entirely different from a single-employer plan. Therefore, section 43 does not really apply; the glove does not fit the MEPP situation. In my respectful submission, I think the MEPPs should be exempted from section 43.

I think we have highlighted some of the major legal issues we are vitally concerned about. Mr. Rivers has some of the benefit-related issues.

Mr. Rivers: I hope it might be detected that we come with some enthusiasm about the MEPP industry, because it works. One of the reasons MEPPs work is that every single one of them has representatives of the employees or the beneficiaries of the trust fund managing their affairs. We think that is one of the keys to their success.

We are not here to suggest to you that we should not have legislation. In fact, legislation is needed in this area to help make these plans work even better, but in order to get the legislation, some special consideration is necessary.

I want to detail a couple of points about the bill that bring out the differences of a multi-employer pension plan that need to be dealt with. I refer to page 19 of our brief. It deals with eligibility and it refers to section 32 of the bill. At the top of page 19, we quote subsection 32(4) of the bill, which says that you will be eligible to participate in the pension plan after "24 months of employment by one or more of the participating employers...."

In trying to interpret that and then to apply it in practice to our clients, we would raise the question for you--and we highlight it in the second paragraph--what is 24 months of employment in a MEPP?

If you happen to be an employee in a hotel and a member of the hotel and restaurant workers' pension fund, you may very well work for 24 consecutive months with one hotel. That would not be uncommon. But certainly in the case of the labourers' pension fund of central and eastern Canada, it is highly unusual for a member to work for the same employer for 24 months, so what is 24 months of employment? Is it one hour in each month? Is it employment in each of those months? Or can you have every other month of employment and every other month of no employment, just because of natural layoff or whatever it might be?

We find it difficult for that language to be applied to a MEPP. What we would suggest is that you look at the Employment Pension Plans Act of Alberta. Representations similar to this one were made by both Mr. Koskie and myself, and we were successful in getting Alberta to adopt special eligibility rules for MEPPs. At the bottom of page 19, we make a suggestion that instead of using both an employment criterion of months of work or work in a particular month, or an earnings criterion relative to the yearly maximum pensionable earnings, that you consider basing it on hours, because most MEPPs operate under a collective bargaining situation and, therefore, hours become a very common denominator, if you will, for keeping track of eligibility. We would suggest that something like 350 hours of employment in two consecutive calendar years might be the threshold for eligibility.

Turning over to page 20, this same idea is carried forward on the issue of deferred pension--the whole aspect of vesting. The bill has been worded to say 24 months of membership. Once in the plan, 24 months of membership may be more easily defined than 24 months of employment but, again, we think some hours-related criterion for MEPPs would help us to solve the problem and make vesting more realistic for those kinds of plans..

At the bottom of page 20, we suggest for MEPPs that not more than 1,400 hours should be required to be earned in a year towards vesting credit. That would just be the maximum. If any plan wanted to say, "We will vest you after 600 hours," that would be up to the plan, but it could not be more than 1,400 hours. We think that is a realistic level, as a maximum, for most multi-employer plans.

Finally on page 21, there should be a maximum of 2,800 hours for full vesting credit, not to be achieved in fewer than 24 months from the date of plan membership. We have tried to relate it to the bill itself, but bring it into language that suits the MEPPs.

The final issue that I would like to raise starts at the bottom of page 23 and goes on to page 24, and that is funding, relating to the contributions. Section 56 of the bill talks about an employer's contributions, how those contributions have to be made and so on. We note that there is no reference to a participating employer in a MEPP. We suggest there are some differences. For one thing, that section should make reference to participating employers, because that is the reference that applies most to a MEPP.

Multi-employer pension plans have a problem as far as contributions are concerned because they are almost all, if not all, subject to collective bargaining agreements. Problems can arise in the middle of a two- or three-year agreement where contributions may be necessary in order to continue the funding at the scheduled level according to the regulation but--due to investment losses or any other actuarial losses, employment is down or whatever--the contributions may not be sufficient to fund the benefits in the scheduled way. There is no immediate rectification to that problem other than

reducing benefits, which is not a desirable thing to do, or reopening the collective bargaining agreement and getting additional contributions, which also has its problems, as you might understand.

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We would suggest to you that some special recognition to MEPPs be given and that if there are funding problems that arise in the middle of a collective agreement, the request to meet the new funding requirements be deferred until the expiration of the collective agreement, which would give the parties to the agreement the opportunity to negotiate the additional moneys that are required.

I mention that again to show you some of the unique problems this industry is facing. We think the bill gives us the opportunity to introduce legislation that will greatly assist the operation of these plans.

Hon. Mr. Kwinter: It is interesting, I have been waiting to address the exact point you made at the very end. MEPPs are almost invariably the result of collective bargaining; is that correct?

Mr. Rivers: Correct.

Hon. Mr. Kwinter: If you have a situation where you do a valuation and you find you are underfunded, you are saying there is no provision for adjusting that other than to reduce the benefits, unless there is a provision made in the new act that allows you not to do anything until the collective bargaining agreement is renegotiated.

The concern I have is that you say that if there are surpluses, the surpluses go to help the plan members in the way of benefits, but if there are not any surpluses--and let us say that it just works out even, so there are not any deficits but there are not any surpluses--it goes along, and so even when you bring in mandatory indexation, it will not affect the MEPPs because there is no provision for it.

If there happens to be a surplus, you are saying they are going to get it, but I am using the hypothetical case that there is no surplus. If there is no surplus, then they do not get it, and there is no provision for them to get it, because there is no way to draw it other than through the collective agreement. Is that right?

Mr. Rivers: You are absolutely correct.

Mr. Koskie: The problem is that the trustees do not have control over the amount of money that is negotiated by the union and the employers into the pension fund. They just get the money out of the collective agreement and do the best they can with it, as trustees. Unlike the single-employer plan where the employer will pay in whatever is necessary to the plan, in a MEPP situation the employers pay in a fixed, negotiated contribution rate, and that will last for the duration of the collective agreement, one, two or three years, as the case may be.

Mr. Rivers: Peculiar to that, however, is a distinction that maybe should be made. It may be understood, but maybe again it is not.

The contributions are defined. It would be easy to say, given the source of the money, they are defined contributions. The majority of MEPPs, however,

take those defined contributions and then define the benefits. They do not operate as defined contribution money purchase plans. There are some, but typically, they do not.

I think one of the main reasons they do not is that they all started a little late and they all want to take advantage of providing past service benefits. That is one of the reasons they look to defined benefit programs. They are very unique in that aspect, in that you have the one end fixed in the contributions and you have the other end fixed in the benefits. As a result, actuarial assumptions tend to be more conservative for MEPPs because of these unique circumstances.

Mr. Polsinelli: Thank you, gentlemen, for an interesting presentation. I now know that MEPP is not just another four-letter word. It seems that we have before us today, an impartial group. Rather than leaning on either side of the issue, you gentlemen seem to be coming right up the middle. Perhaps you can explain some things that I still fail to understand. How long has your pension plan been established? How many years has it been in operation?

Mr. Rivers: It started in 1971.

Mr. Polsinelli: So it has been in existence for about 16 years. If you look back at your track record over the past 16 years, have you been able to keep up with inflationary increases and the cost of living? How well have you been able to keep up with them, perhaps I should ask?

Mr. Rivers: The pensioners themselves have, I would not know the exact date but I think there have been one, maybe two what I would call ad hoc increases, "We will increase by 10 per cent, or whatever." I think that has happened once, maybe twice. It has not happened since 1978, for some financial reasons related to the plan. The funding of the program has been, I recall it, tight.

I would say, however, that the plan design is generous in that it is a final, average design. Someone can work 24 years in the industry at, let us say, a contribution rate of 50 cents an hour. If the contribution rate is negotiated to 60 cents an hour, and that person works 1,200 hours at 60 cents an hour, all of his years will be credited at 60 cents an hour.

Mr. Polsinelli: Essentially he gets his best years.

Mr. Rivers: He gets his best years.

Mr. Polsinelli: His best paying years.

Mr. Rivers: So to that extent there are increases going on all the time.

Mr. Polsinelli: Your plan is fully funded, I mean, you are not in a deficit situation, you can meet your actuarial liabilities?

Mr. Rivers: The plan is not fully funded. There is an unfunded liability.

Mr. Polsinelli: There is an unfunded liability. Explain one thing to me. Assuming that you have assets of, say, \$100 million and that \$100 million in assets puts your plan in a fully funded position so that you can meet your

actuarial liabilities, if you have a four per cent return on those assets and the cost of living increases four per cent, would that four per cent return on those assets be enough for you to increase your pension benefits to your existing pensioners at four per cent and remain in a fully funded position? That is if your earnings on your assets and your investment is equal--

Mr. Rivers: Over and above our assumptions?

Mr. Polsinelli: This is perhaps something I do not understand. I am saying, simply, if you have assets of \$100 million and assuming that the plan is frozen, no further contributions and the like, if those assets are enough for you to meet your actuarial liabilities, if you have a percentage increase in those assets, would you be able to translate directly that percentage increase to benefits, or is there something that I am not understanding.

Mr. Rivers: If I understand your extra two qualifications that you made, one, that things are frozen, and all you have to do with the interest earnings is to provide inflation protection to retirees and you earn four per cent on all of the assets, yes, that should be sufficient to make a four per cent increase to the retirees.

Mr. Polsinelli: Without putting yourself in an unfunded position. It would be sufficient, then.

Mr. Rivers: Yes.

Mr. Polsinelli: What would change, then, if it is an ongoing plan and you have additional contributions and future liabilities in the terms of people who are not receiving benefits yet, why would that situation be different? Why would that require, as some groups have been telling us, additional cash input right away, may put them in an unfunded situation?

Mr. Rivers: You made a couple of qualifications--

Mr. Polsinelli: Mr. Rivers, I understand the first one, but I am personally trying to understand the process in my simple way of approaching it. If you have a four per cent increase in your assets, you should be able to translate that four per cent increase towards benefits, but that is not the way it is looked upon actuarially. I would like an explanation as to why that relationship is not as simple as it is in my mind and perhaps in Mr. McClellan's mind.

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Mr. Rivers: The population of the group changes. People get older. As people get older, costs rise. Mortality is a factor. If people are not dying as quickly as you expect them to, that is going to drive costs up.

Particularly in this situation, employment is a very big factor. We would make assumptions on projected revenue, based on a certain level of employment, on the average within the industry. If we do not meet that employment assumption, that means we do not have the revenue we expected and therefore there are likely to be some losses we did not anticipate, which have to be made up from some other place, i.e., investments.

Those are some of the factors that do not make the equation, if you will, quite as straightforward as you suggest it might be. If it were a frozen situation and there were no new liabilities being created and so on, depending

on the size of your retiree population, the likelihood is that interest earnings on those assets would be sufficient to meet increases to the retirees.

Mr. Chairman: Mr. McClellan.

Mr. McClellan: Mr. Polsinelli actually asked my questions.

Mr. Chairman: Thank you very much, gentlemen. Are you coming back tomorrow too?

Mr. Rivers: Would you like us to?

Mr. Chairman: You can drop in and listen to some of the others. We have to; so maybe you would like to, too.

The last witness for today is--it looks like, from reading the first paragraph, a great politician--Mr. Stafford from the Faculty Association at Lakehead University.

FACULTY ASSOCIATION AT LAKEHEAD UNIVERSITY

Mr. Stafford: I will not bother going over the first page--you can take a look at it yourself--but yes, we compliment all parties involved and point out how important this work is, given the past history of the abuse of pensions by employers. If we flip to page 2, we get down to the specific point that the faculty association wants to bring to your attention.

Our concern is that the wording of sections 26 to 31, "Disclosure of Information," does not ensure the degree of disclosure which is intended in those sections. Our concern comes from our own experience in attempting to obtain copies of the prescribed documents from our employer. The following paragraphs describe this experience.

The section in question is section 30, which states: "On written request, the administrator of a pension plan shall make available the prescribed documents and information in respect of the pension plan for inspection without charge." These prescribed documents are listed in Ontario regulation 31/87. They include details of the pension plan and its earlier versions, all annual information returns filed under subsection 17(4), all reports filed with the Pension Commission of Ontario under sections 4, 5 and 12, and "Correspondence between the commission and the administrator of the pension plan...."

The faculty association took the opportunity provided by this regulation. We arranged a meeting and requested in writing an inspection of the prescribed documents. Unfortunately, the representative of our administrator of the plan was not able to accommodate us. He provided us with copies of the annual reports to the pension commission, which just state the annual contributions of the employer and the employees. We questioned him about any other of the documents and were particularly interested in correspondence dealing with surpluses. He told us that such information was included in the correspondence between the administrator and the trustee, who then corresponded with the Pension Commission of Ontario on behalf of the administrator.

As a consequence, we were not privy to this information. The only information that we were able to obtain were these annual reports, which are practically devoid of information, although it is important to note what the employer is contributing, I guess.

It is our concern that this sort of thing is going to be duplicated across Ontario in many cases. It appears that the wording allows the employer to say: "We have not actually corresponded with the commission. We have had our various representatives correspond with the commission." We do not think this is the spirit of Bill 170. In fact, we think it can generate an awful lot of problems, acrimony, etc., perhaps litigation, a lot of phone calls and correspondence with the pension commission.

It seems to me that you can change the wording in section 30 and perhaps eliminate some of these problems. Why not set up the wording such that the employee, the member of the plan, is party to all correspondence and all documents associated with the plan? This would include correspondence between the administrator and the trustee, the administrator and the actuary, the administrator and the fund evaluator--all of these people.

It seems to us that it is a very reasonable thing that employees should know what is happening to their plan, and it is not going to hurt the employer to let the employees know about this. This is the limit of our concern, but we wanted to share that with you, and we hope you will look into that particular situation, based upon our own experience. That is all that I have to say.

Mr. Chairman: Thank you very much. Are there any questions of Mr. Stafford? It is a very quiet bunch today; you must agree.

Mr. Stafford: I could talk about how our fund has performed and the possibility of indexing, if you like.

Mr. Chairman: Thank you very much.

Mr. Stafford: You did not want to know that. Thank you.

Mr. Chairman: I will just tell the members of the committee that the 4:30 p.m. presentation tomorrow has been moved up to 11:30 in the morning because the previous 11:30 presentation was cancelled.

Mr. McClellan: So they are not making a presentation?

Mr. Chairman: No, they are not. So with the co-operation of the members, we should finish at 4:30 p.m. sharp or earlier tomorrow.

Mr. McClellan: Are we going to schedule the clause-by-clause or will that be done in the future?

Mr. Chairman: I doubt that we can schedule it, because we have to get the House's permission to sit.

Clerk of the Committee: No.

Mr. Chairman: No, we do not?

Clerk of the Committee: No. We are sitting on Thursday.

Mr. Chairman: Oh, on Thursday. Well, the first Thursday then--which is what, the 30th or something of April? We are sitting by our old--

Mr. McClellan: The regular sitting day is Thursday?

Mr. Chairman: Thursday, yes. In the morning and afternoon, is it? I do not know.

Hon. Mr. Kwinter: I am sure they will work it out and let us know.

Mr. Chairman: We probably could meet at 10 a.m. on April 30 to discuss the two aspects of the committee's work: the review of the School Boards and Teachers Collective Negotiations Act and this. We could agree, although it would be short notice, that we would sit on one or the other in the afternoon. By that time, I think there would be some documentation from research to review on both of them. Would it be agreeable if we do the organization on April 30 and schedule further from there?

Mr. McClellan: Just in terms of the times since there is a relatively short time next week, it might be helpful, if you had another item of business to do on April 30, to do that and then schedule the clause-by-clause on April 30. We would not start actual clause-by-clause until the following week.

I assume the ministry will have some amendments to bring forward which I am sure we would all like to see. We also have amendments that are in the course of preparation, and I know that my Conservative colleagues are waiting for the conclusion of the hearings to make some decisions about amendments too. Some leeway in time, I think, would be helpful.

Mr. Chairman: Can we agree then that, from an organizational point of view, we would meet on the 30th at our regularly slotted time to further schedule these two items. We probably will be receiving some information from research at that time, a receipt of information which you will likely want in any event.

Mr. McClellan: Yes, that is good.

Mr. Chairman: I do not think we have the leeway to do anything before the 30th, as I understand it.

Mr. McClellan: No. It also would be very difficult to pull all the material together.

Mr. Chairman: Thank you, everybody.

The committee adjourned at 4:30 p.m.

STANDING COMMITTEE ON GENERAL GOVERNMENT

PENSION BENEFITS ACT

THURSDAY, APRIL 16, 1987

Morning Sitting



STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: McCague, G. R. (Dufferin-Simcoe PC)

VICE-CHAIRMAN: Guindon, L. B. (Cornwall PC)

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Substitutions:

Davis, W. C. (Scarborough Centre PC) for Mr. Sheppard

Epp, H. A. (Waterloo North L) for Mr. Fontaine

Polsinelli, C. (Yorkview L) for Mr. Offer

Clerk: Deller, D.

Staff:

Kaye, P., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Financial Institutions:

Kwinter, Hon. M., Minister of Consumer and Commercial Relations and Minister
of Financial Institutions (Wilson Heights L)

From the Canadian Union of Public Employees, Ontario Division:

Stotsky, K., Research Officer

MacDonald, J., Vice-President

From the Canadian Manufacturers' Association:

Sass, R., Member, CMA Financial Policy Committee; Controller, Sass
Manufacturing Ltd.

Shemeluck, D., Chairman, CMA Financial Policy Committee; Comptroller, Trane
Canada Inc.

Owen, E., Manager, Taxation and Financial Policy

From Kenneth G. Brown Associates:

Gorham, P., Actuary

Gow, D., Senior Associate

From Canadian Life and Health Insurance Association Inc.:

Devlin, G., President

Goldberg, T., Vice-President, Standard Life Assurance Co.

Speed, F. W., Vice-President, Life Insurance and Annuities

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday, April 16, 1987

The committee met at 10:03 a.m. in room 228.

PENSION BENEFITS ACT
(continued)

Consideration of Bill 170, An Act to revise the Pension Benefits Act

Mr. Chairman: Okay, ladies and gentlemen, let us begin. The minister will, no doubt, be along momentarily. The first presentation is from the Ontario division of the Canadian Union of Public Employees. We have Karen Stotsky, who is a research officer, and Jack MacDonald, who is a vice-president of the Ontario division. Would you please proceed?

CANADIAN UNION OF PUBLIC EMPLOYEES, ONTARIO DIVISION

Ms. Stotsky: The Ontario division of the Canadian Union of Public Employees welcomes this opportunity to present its views on the Pension Benefits Act.

With over 330,000 members, CUPE is the largest trade union in Canada. In this province, we have over 130,000 members. Our members work for boards of education, municipalities, hospitals, universities, nursing homes, homes for the aged, electrical utilities, voluntary social agencies, welfare agencies, the Ontario Housing Corp. and the Workers' Compensation Board.

Our members are covered by a wide variety of pension arrangements. A large percentage come under the Ontario municipal employees retirement system, or OMERS. We also have a significant number of members covered under the hospitals of Ontario pension plan. A smaller proportion of our members are covered by single-employer plans in a number of universities, Ontario Hydro, and the Workers' Compensation Board.

We also have a small but growing number of members who do not come under any of these existing plans and generally have no private pension coverage. Usually, these are small employers such as day care centres and nursing homes. I would like to point out, however, that even though they are small employers, they represent a significant number of people. For example, we have over 4,000 members who work for for-profit nursing homes and who have no pension coverage whatsoever.

CUPE is pleased that, after decades of study, action is being taken to legislate improvements to private pensions. Despite the changes embodied in the proposed legislation, however, Bill 170 still suffers from serious drawbacks. Lack of inflation protection and the continuation of surplus withdrawals are two critical weaknesses. We have concerns as well about eligibility for membership, the complexity of the vesting rules, the failure to recognize fully the role of unions in pension administration and the limitations in portability provisions.

Before proceeding to a more in-depth examination of these issues, we would like to emphasize one point. A great debate on pension reform has raged

in this province for the past decade or so. We acknowledge the importance of the technical discussion that has taken place. However, it is crucial to remember that the fundamental issue at stake in the debate is the economic status of Canada's present and future elderly. The ultimate goal of pension reform is to guarantee adequate retirement incomes to our senior citizens.

For that reason, we have been consistently promoting the increase of public pension benefits. The flaws that we listed above are some of the factors that reinforce our position on these public programs. We believe that to ensure adequate retirement income for the present and future elderly, there must be a greater role for old age security and the Canada and Quebec pension plans.

Inflation protection is a key issue for our members. In the absence of inflation protection, the erosion of purchasing power can impose severe financial hardships on pensioners. The refusal to require inflation protection for deferred vested benefits and benefits in pay is a major shortcoming in Bill 170.

Since there has been some controversy about pension indexing in recent years, it is worth illustrating its importance. Take, for example, a woman worker retiring at age 65 in 1962 with a nonindexed retirement income of \$400 a month. Her life expectancy would be approximately 18 years, and assuming she earned approximately the average industrial wage before retirement, her income at the time would have been considered adequate. Yet by 1980, 18 years later, inflation would have reduced the purchasing power of her pension to only 36 per cent of its former value. She would be living in poverty and certainly not maintaining her pre-retirement standard of living.

Clearly, inflation protection is not a frill; it is an essential element in an adequate retirement income. Even at low rates of inflation, for example, three per cent, the value of pensions decline significantly by 25 per cent over 10 years. The majority of CUPE members belong to plans that provide ad hoc adjustments. There is no guarantee of future increases, nor is there an assurance of protection to deferred vested pensions.

In the absence of mandatory inflation protection, pensioners are being relegated to a retirement into poverty. The inclusion of mandatory inflation protection is essential for pension plans to meet the retirement security needs of plan members responsibly.

Mr. MacDonald: I would like to carry on with the topic of surplus withdrawals.

My name is Jack MacDonald. As well as being vice-president of the Ontario division, I am the president of the union that represents all the Hydro workers in the province. Certainly, the last area and this next one are the ones that concern us very much.

In the first three quarters of the fiscal year ending March 31, 1986, companies in Ontario withdrew \$187 million from surplus pension funds for their own use. This practice is totally unacceptable. Workers have given up take-home pay in order to provide themselves with pension benefits. Employer contributions are directed towards a pension fund that is intended to benefit employees. Surpluses that accrue must remain in the plans and be applied towards improvements in these benefits.

In a Canada-wide survey conducted last year, respondents indicated

strong support for this position. Fully 92 per cent believed that moneys in pension funds belong either to the employees or to both the employer and the employee jointly. Only four per cent felt that these funds belonged to the employer. Further, the vast majority of respondents said the employer should not be allowed to take money out of the pension fund.

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Recent practice with regard to surplus withdrawal in this province has dramatically shaken our members' confidence and trust that their interests are being respected. Not only have the widely publicized surplus withdrawals generated deep suspicion with regard to the judicious placement of our members' money, but also they have given rise to the fear that interest on employees' money is being used to serve the interests of the employer.

Instead of prohibiting surplus removal, the present bill simply establishes the rules under which the employer can withdraw surplus funds. We believe there must be an unqualified prohibition of employer removals, in both ongoing and terminating plans. Employers should also be prohibited from removing the surplus in the form of reduced contributions or contribution holidays. For example, the employers' contributions to the hospitals of Ontario pension plan have continued to decline, thus eroding the plan surplus.

Over a 20-year period, employer contributions to HOOFP have been reduced by almost 60 per cent. Most of that reduction has taken place over the last 10 years. For 1987, the plan actuary recommended a zero contribution level. Although this recommendation was not implemented, it substantiates our serious concerns.

The large surpluses which the HOOFP fund has accumulated should be used to improve the plan. Unionized members have been arguing for a number of improvements, including inflation protection. For example, over the last 10-year period that employer contributions have been reduced, ad hoc adjustments were barely half the rate of inflation.

In our view, employer contributions should not be allowed to fall below the prior year's rate without the expressed concurrence of the trade unions representing the affected employees, and in no event should the employer contributions be allowed to fall below employee contributions.

Ms. Stotsky: I would like to speak about eligibility for membership.

In our view, the proposal to allow an employee to join a pension plan after two years of service presents too long a waiting period. To improve the situation of plan members who are relatively mobile, not only an earlier vesting period but also a shorter waiting period is required. Under current proposals, it could take a new employee four years before he or she would be entitled to vested benefits of an employer-sponsored plan. That would include the two-year waiting period plus the two-year plan membership required for vesting.

Many plans provide that employees are eligible for membership on completion of the probationary period. Once the employment relationship is solidified, plan membership is triggered. We recommend that employees automatically be eligible for plan membership following the completion of their probationary period or after six months of employment, whichever occurs first.

We also have concerns with regard to eligibility for part-time workers. Many of our part-time workers are specifically excluded from major plans which affect CUPE membership. Part-timers are included in OMERS, for example, only at the specific request of the employer.

Bill 170 provides protection for part-time workers only if they earn at least 35 per cent of the Canada pension plan's yearly maximum pensionable earnings in two consecutive years. We are concerned that this threshold is so high that some workers may still be excluded from eligibility. Rough calculations of average earnings of our part-time workers reveal that many will be just close to the cutoff point. Part-time members earning less than our members would likely not qualify, and those earning minimum wage would definitely be excluded. We recommend that this eligibility criterion be rescinded. In our view, part-time workers should be eligible to participate if they so choose.

We are also concerned about the provision allowing for the establishment of separate pension plans for part-time workers if the separate plan provides benefits "reasonably equivalent" to those provided under the pension plan maintained for full-time workers. It is not clear what constitutes a plan that is "reasonably equivalent." Is this a plan with roughly similar benefits, or could it include an entirely different type of plan, provided the overall cost is similar? It is also not clear how changes from part-time status to full-time status or vice versa would be handled in situations where these reasonably equivalent plans exist.

The proposal to reduce vesting requirements is a welcome improvement. However, the manner in which the change is being applied will give rise to great confusion and inequities among plan members, as well as administrative difficulties for plan sponsors.

The committee has no doubt been given specific case examples of the anomalies to which this provision gives rise. We propose that the new rules apply uniformly to all employees as of January 1, 1987; in other words, that the new vesting requirements be a uniform two years of plan membership, applicable to anyone who is an employee and plan member as of January 1, 1987.

Mr. MacDonald: I will carry on with the worker representation section.

Despite the fact that workers have always paid for the benefits to which they become entitled under private pension plans, both the law and the practice have tended to deal with them as if they belonged to the employers. We believe, however, that the right of workers to participate in the administration and trusteeship of pension plans should be recognized in law.

In our brief to the royal commission in 1977, CUPE called for mandatory co-management of all pension plans, where requested by a majority of plan members, based on an equal number of employee and employer representatives on the pension board. This recommendation was based on the view of pensions as deferred wages, to which the employee has contributed and should have equal say. We reiterate this point and strongly recommend that it be incorporated into the proposed changes.

Although the bill provides for the establishment of advisory committees, their powers are restricted and they serve only an advisory role. These committees fall far short of the options for participation that are in keeping with the fact that pension plans are trusts maintained for the benefit of plan

members. As such, these committees are not an acceptable alternative to full worker representation on pension committees or boards of trustees.

All plans should be administered by a committee or board of trustees, of whom at least half are representatives of the members of the plan. This should be available automatically on the request of the union or, where there is no union, the majority of the employees. Further, the bill should specify that where there is a collective agreement, the union must be the one to select the employee representatives.

Ms. Stotsky: With regard to portability, in our view, the proposed legislation only partly addresses the issue of portability for those terminating employment. A terminating employee who is entitled to a vested pension may elect to take the pension with her or him, rather than leave it as a deferred entitlement with his former employer. Under the new rules, an employee may elect to transfer the lump sum value of this vested pension to the new employer's pension plan, to a locked-in registered retirement savings plan or to purchase a lifetime annuity.

While great detail is given for portability out of a pension plan, however, there is no requirement for portability into the plan the employee is joining. There is no requirement that a pension plan be required to accept funds transferred from another plan by an employee who changes employers. Clearly, the only way to ensure portability between plans is to require that all plans accept transfers in, with credits calculated on the same basis as commuted values of transfers out. In the absence of such a requirement, portability is almost certain to be portability from pension plans to registered retirement savings plans.

The failure to provide for full portability, in effect, penalizes members simply because they are employed by various employers over a lengthy working career. The absence of the full portability required will result in mobile employees deriving a fragmented retirement income from their last employer prior to retirement and a previous succession of locked-in RRSPs.

With regard to section 54 of the legislation, we are concerned that this section will discourage the provision of survivor benefits on an unactuarially reduced basis. Not only will this disrupt existing arrangements, for example, OMERS and HOOPP both provide survivor benefits on an unactuarially reduced basis, but it may also serve as a disincentive to plans which may use survivor benefits as a method of improving pensions for survivors. We recommend, therefore, that this section be deleted.

In conclusion, we commend this government for initiating legislation for long overdue pension reform, but find Bill 170 seriously flawed in not requiring mandatory inflation protection and in failing to prohibit surplus withdrawals. We have noted other areas of concerns as well.

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We in the labour movement have argued that expansion of the old age security and Canada pension plan is the most appropriate way to ensure that retired persons have an income that is adequate for a dignified life. We are of the opinion that an extended CPP and OAS is the only real mechanism for ensuring an adequate income for all of Canada's elderly, both now and in the future. However, the reality is that public policy continues to accord an important role to employer-based pension plans. Given this fact, governments

must compel employers to improve private pension plans so that participating employees can be assured that their interests are both respected and protected.

Thank you for giving us this opportunity to speak.

Mr. Chairman: Thank you for your presentation. Are there any questions?

Mr. Lane: On page 5, at the second paragraph from the top, you talk about prohibiting surplus removal. Is there any way the bill should be amended so that under certain circumstances an employer could borrow from the surplus to expand business, provide more jobs, etc., if it were apparent the business would make more money than it would in its present environment? We are aware of many cases where it should not be allowed to happen, but are there any cases where it should be allowed to happen and under what circumstances?

Mr. MacDonald: I am not sure I understand, but as far as I am concerned, that would not constitute a surplus withdrawal. That is a form of investment and a use of public sector pension funds. In my opinion, that is quite a different thing from the removal of surpluses because that is a possibility even when there are no surpluses in a fund. It would be up to the board of trustees and so on to make that sort of investment. If the return on that investment was on a par with other investments, I see nothing wrong with that, as long as there is a guarantee of that investment.

Mr. Lane: That helps me a bit. I can think of situations where the employer could take the funds if there is a large surplus--there seems to be a fairly large surplus in some cases--and invest it to the advantage of the employees, providing of course that it was a loan and not a withdrawal service, so to speak.

Mr. MacDonald: Of course, there is quite a different set of rules as far as the investment of the funds is concerned.

Mr. Lane: Moving on to page 7, the second paragraph from the bottom talks about part-time members being able to qualify. I certainly agree with that; I just wonder about the qualifications. Under what circumstances, after how many hours or in what situation would you recommend that they would be able to qualify?

Ms. Stotsky: I know that a number of different formulas have been suggested, both dollar formulas and hour formulas. What we were trying to get at is that there should not be any eligibility criteria put in the act that would constitute some sort of discriminatory aspect because of which part-time employees would not be able to participate.

For example, I remember that when I was talking to a plan sponsor in New Brunswick, I was saying something about the number of hours in the plan, how it prohibited the number of part-timers and how the plan should maybe convert to hours as an eligibility criterion. She said: "It does not make any difference. No matter what kind of criteria you use you will always be cutting some people off." If the point is that you want to have a maximum amount of coverage and enough people eligible to participate in a plan, particularly one for part-timers, then I think they should be allowed to opt in if they so choose.

Mr. Lane: On page 13, and we can wind up there, you say, "Given this fact, governments must compel employers to improve private pension plans...."

We have been hearing that if the government compels employers to do something, then a lot of them will probably opt out of the plans they have or will not establish any plans. Is there any sort of soft way to approach that? "Compel" is rather a strong word.

Ms. Stotsky: Our opinion on that would be that when new changes are introduced, there is always a reaction. It seems to me that when the idea of severance pay was first introduced, employers were also saying, "We cannot have severance pay because that would cost too much and we would end up going broke." We feel very strongly that if we are really after a pension system that is going to guarantee retired people a dignified and decent life of retirement with an adequate income, then to be effective these plans have to have some substantial changes to provide that guarantee.

Mr. McClellan: Thank you, Mr. MacDonald and Ms. Stotsky for a very fine brief.

We have raised in the House a number of times the issue of the Ontario Hydro workers' pension plan situation. Could you review briefly where we are at? I understand that there is a very large surplus.

Mr. MacDonald: I will be glad to try. First, I might qualify it by saying that Local 1000, representing approximately 17,000 people who work for Hydro, has the right to negotiate pensions enshrined in its collective agreement. That is somewhat different from some of the other public sector unions. They do not have the right to negotiate. Clearly, we have the right to negotiate even though we are not part of the administration of the plan nor are we on the board of trustees. That troubles me somewhat.

What has developed over the years as we have negotiated changes--I think we have effectively negotiated a number of changes in our plan--is that the surplus has begun to grow. For the first time, last July Ontario Hydro took the position that it had sole ownership of that surplus and it reduced its contributions to zero. That was the first time that its contributions ever went below the level of contributions by the employees. They went down to zero and they developed a five-year financial plan that troubles us very much.

At the time there was \$244 million in the plan. The latest actuarial report put it at \$399 million. If you want to look at the new accounting practice, it is somewhere near \$1 billion. Nevertheless, under the actuarial report that came out for the year 1985, it pegged the surplus at \$399 million.

Based on the 1984 report, the financial plan of Ontario Hydro was to use that \$240 million by eliminating its contributions over the next five years. That effectively would give them a free ride for five years. They would be using the surplus and at the end of five years the surplus would disappear.

Mr. McClellan: The pension moratorium does not apply to the kind of scam, if I can use that word, that Hydro is involved in.

Mr. MacDonald: Had they wanted to do it above-board according to the Pension Benefits Act, I think they would have had to apply to the Pension Commission of Ontario for removal of funds. The \$240 million did not qualify them because under the 25 per cent rule, they would have to exceed a \$750 million surplus to be eligible under that rule.

Mr. McClellan: So they have come up with a way of taking \$240

million out of the surplus account by coming up with a five-year service funding holiday.

Mr. MacDonald: A five-year plan. What is most alarming is that in the past year the surplus grew from \$240 million to \$399 million. That is another \$150 million.

I might say that just the year before, they attempted to do precisely the thing with our pension plan that is covered by the same insurance plan. They were going to remove \$40 million and put it into the long-term disability plan. We went to court over that issue and finally Hydro backed off. They agreed that there was assured ownership of that \$40 million and we are going to be on a premium holiday for life insurance until at least 1992 to use up that money. They locked it in.

When Hydro developed its five-year financial plan in the pension plan this last year and notified us, we immediately filed action because we believe it was not in compliance with the Power Corporation Act that indicates its contribution should be based on the current cost of the liabilities, which the actuary had struck at eight per cent as a result of the 1984 report.

As you know, that went to the Divisional Court and we lost a split decision. If you read the report, Judge Reid, who was very heavily involved in the Dominion case, sided with us and said he did not see any difference in what Hydro was doing in removing a surplus. However, the other two judges ruled against us and said there was nothing in the legislation to prevent Hydro from doing it, that it may be morally wrong, but there is nothing in the legislation to prevent it from doing what it did.

We were so alarmed that we have now appealed that decision to the Court of Appeal. As you know, the courts move rather slowly and we anticipate that it will take upwards to a year for us to get that before the Court of Appeal.

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At the same time this year, based on an understanding that the court decision would not be affected, we did settle a three-year agreement with Ontario Hydro that had as a component of that agreement three or four pension improvements built into it. We did not address the question of legal ownership of the surplus because we felt that was properly before the courts.

As an example, we negotiated a 60 per cent spouse's pension. We negotiated a guaranteed ad hoc cost-of-living increase over the term of this contract for the next three years of 60 per cent of the cost-of-living increase, as well as negotiating some changes to try to make the pension plan somewhat more equitable for the union members versus the management members who are part of the same fund.

The major part of that settlement was that Ontario Hydro agreed to sit down with us during the next three years to attempt to negotiate an ongoing indexing scheme to cover all the pension plan members, and we are going to be doing that. The difficulty with starting that process as long as these hearings are going on is that because Ontario Hydro is a crown corporation, we know it is doomed to fail until the legislation comes out and addresses the situation making that a real possibility.

But we recognize that we do have the right to negotiate those improvements--we do not believe the legislation is going to give us a

gift--and we fully intend to negotiate those improvements at the time. Right now, some of the comments in the newspaper, even by the minister, are going to make it most difficult when we are dealing with a crown agency at the bargaining table. We have been through these hardships before and we will carry on. Unfortunately, we have to negotiate the improvement for all the management people at the same time, but I guess somebody has to represent them.

Mr. McClellan: We will certainly be pursuing the raid on your pension surplus account. The minister locked the front door and Hydro has gone in and robbed it through the back door which the minister has left wide open. I think it is just outrageous and I do not understand how government policy can accommodate this kind of thing, but I guess we will have to pursue that when the House comes back.

Mr. Lupusella: I have a simple question. On page 1 you state that you have 130,000 members. On the surplus issue on page 4, you also state that companies, as of March 31, 1986, were able to withdraw \$187 million from surplus pension funds. Are you talking about all the companies in Ontario?

Ms. Stotsky: Yes.

Mr. Lupusella: Including your own members?

Ms. Stotsky: Yes.

Mr. Lupusella: Do you have a specific figure of how much money or how many millions of dollars were withdrawn from surplus pension funds affecting your own members? Do you have this specific figure?

Mr. MacDonald: I can try to comment on that. You have to accept that the people we represent are covered by public sector pension plans and there has not necessarily been any direct removal from those specific plans. There have been premium holidays and all those concerns that we have. As an example, Ontario Hydro in the year 1987 is using \$70 million out of the surplus to defray its contributions. None of those, premium holidays or reduced contributions, is included in that \$187 million. So really, those are plans outside the public sectors, such as the Ontario municipal employees retirement system, the hospitals of Ontario pension plan and the Ontario Hydro plan.

Ms. Stotsky: Further to that point, I would like to comment that even though most of the members of our union are not affected by the direct, front-door surplus withdrawal situation, my experience is that it has really shaken our members' confidence in their pension plans. In my work, I frequently go to different locals' work places to make presentations to them about their pension plans, to explain to them what their benefits are and to talk to them about bargaining improvements. Inevitably, the first question I always get after the presentation is, "Has there been a surplus removal from our plan?"

They read this in the paper and they have grave concerns about where their money is going. They feel they are being ripped off.

Mr. Lupusella: If I may pursue this further, considering that you are representing the workers and would like to get into specifics about the surplus funds, of money affecting your own members, are you able or can you get this information on their behalf, or there is no way to get such figures?

Ms. Stotsky: Do you mean surplus removals through contribution holidays?

Mr. Lupusella: Yes.

Ms. Stotsky: We would probably be able to get those figures, although I could not say for certain.

Mr. Chairman: Thank you for your presentation.

Ms. Stotsky: Thank you for the opportunity.

Mr. Chairman: The next presentation is from the Canadian Manufacturers' Association. We have Bob Sass, CMA financial policy committee; Dennis Shemeluck, chairman, CMA financial policy committee; Eric Owen, manager, taxation and financial policy; and Mr. Denholm, vice-president, Ontario Division, CMA.

CANADIAN MANUFACTURERS' ASSOCIATION

Mr. Shemeluck: The CMA is the spokesman for manufacturers of every size and kind across Canada. About 75 per cent of all goods in Canada are produced by CMA member companies.

Like the three levels of government, the CMA is structured nationally, provincially and regionally. The association's seven divisions and 28 local branches may deal finally with matters that lie purely within their respective jurisdictions, and the elected representatives participate fully in national CMA policy-making, provided the decisions are in conformity with policies established by CMA's board of directors.

CMA policies and views are the product of committees made up of acknowledged leaders and experts from member companies and staff.

Pension reform contained in Bill 170 basically implements a package of reforms for pensions based on the federal-provincial majority consensus developed over the past several years. While there is substantial agreement on most matters in Bill 170, it does not contain the one issue that is of major importance. This is the issue of mandatory inflation protection for private pensions.

While the minister has established a three-person task force to look at the most appropriate formula and phase-in procedure for inflation protection, certain members of the Legislature have indicated their intention to address this issue before the report of the working group is tabled. We therefore feel it is appropriate to address this issue also today.

Pension reform undoubtedly will result in increased costs to employers who currently have pension plans. Although pension reform is important, our concern with costs focuses on the entire employment cost package, which includes wages and salaries, other employee benefits and government programs such as the Canada pension plan, Quebec pension plan, unemployment insurance and workers' compensation.

While wages, salaries and benefits are subject to market force bargaining, our analysis shows the consumer price index has increased by 36.8 per cent from 1981 to 1987 while comparable increases in the three government programs have increased 141.7 per cent. The cumulative effect of these

government-mandated programs is already of great concern to the business community. If employers are forced, among other things, to introduce mandatory inflation indexing for private pension plans, their ability to compete in the global village will not only be seriously eroded but will also, in many instances, have disastrous consequences.

The ownership of pension surpluses is a very subjective issue and CMA's Ontario division urges the government to balance the arguments carefully in order to arrive at a system that will be fair to all and have the most beneficial social effect.

Underlying much of the current debate is the basic question of whether a pension entitlement in a defined benefit plan is simply a deferred wage or salary. The theory behind the claim is that the pension funds belong to employees by virtue of the deferred wage concept.

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While a pension entitlement is linked to employment, is the deferred wage assertion really valid? There is no doubt that pension entitlements represent a valuable part of the employment package of wages and benefits. However, it is wrong to assume that any employment cost or element of compensation is automatically a wage, deferred or otherwise. In our opinion, a defined pension benefit focuses on income replacement rather than on capital accumulation.

Another major question is the distribution of risks and rewards in a pension plan. Benefits from pension plans generally reflect the compensation structure on which the plan is based. However, because of the time factor, i.e. pension service, there is a significant uncertainty involved in any relationship between contributions and benefits.

Employers negotiate with or voluntarily make a commitment to their employees concerning the amount in terms of the benefits under defined benefit pension plans. Employees have the security of knowing that the agreed, stated benefit will be provided and are freed of responsibility for ensuring how it will be furnished.

Besides contributing to the fund, it is also the employers' responsibility to invest appropriately any contribution made by employees. Should this risk-taking result in poor investment performance, it is still the employers' responsibility to top up pension plan funds. In many past years, employers have absorbed such risks by making larger-than-expected contributions to pension plan funds. For example, in the early to mid-1970s, many pension plans had large deficits due to low interest rates and a high rate of inflation. Because employers discharged their obligations through larger contributions, the employee's pension benefits remained secure in all circumstances.

I might add, that is precisely the position our companies have in the private sector.

In recent years, owing to unexpectedly high real rates of interest, the investment performance of pension plans has far outstripped their actuarial liability. This has resulted in large surpluses, which are now being claimed by both sponsors and members of pension plans.

It is our belief concerning defined benefit plans that the surplus

should be for the employer's benefit, since he assumes the risk of providing the promised pension. In defined contribution plans, the employee has the right to the surplus, since he bears the risk.

Sections 79 and 80 of Bill 170 address the issue of surpluses, especially with the provision of a legal definition of a minimum surplus.

We agree that an appropriate safety margin for assets over liabilities should be established and should be immune from access by either of the interested parties. This would also provide a cushion to the plan in the event of the sponsoring company going bankrupt.

The regulations should set out a consistent basis for valuing both assets and liabilities for this purpose, and withdrawals of surplus would only be applicable to the extent that it is above this safety margin.

We believe withdrawals are necessary to ensure funding policies balance necessary rewards. This would not disadvantage either the employee or the corporation.

To turn now to the indexation, the Ontario division of the Canadian Manufacturers' Association has a deep concern about the plans of the government to include mandatory indexing in the provincial pension legislation.

The federal-provisional pension consensus, developed over several years, was supported by the business community on the understanding that mandatory pension indexing was dropped.

CMA members share the universal concern that a period of high inflation could cause erosion over time of the purchasing power of fixed retirement incomes. We must point out, however, that responsible employers recognize their obligations to protect pensions as much as possible. Many of our members have done this through periodic and, in some cases, regular increases, either by management decision alone or as part of negotiations with a trade union. This voluntary approach permits employers to direct their efforts to pensioners' needs, while reflecting their ability to absorb added costs.

Again, our company supplied voluntary increases to all pensioners through years of high inflation by increasing the pensions accordingly, strictly on a voluntary basis.

Previous studies have shown that mandatory indexing has a very significant cost impact on all companies with pensions, and CMA rejects open-ended and unlimited adjustments of pensions to reflect fully the increase in the consumer price index as financially irresponsible and in itself inflationary.

Such a unilateral move by Ontario would be a strong disincentive for companies currently without pension plans to establish new programs. Indeed, some companies could be encouraged to wind up their pension plans. For those companies which change their plans, we suggest they would revert from defined benefit pension coverage to provide defined contribution benefits, which, while less costly, would most adversely affect those employees now closest to retirement. Indexing would also broaden the gap between employees with and those without plans and benefit, almost exclusively, retirees from companies which already have the best programs.

Further, mandatory indexing would intrude into collective bargaining. Benefits, similar to compensation, must be negotiated between corporations and the employees' elected representative. Any attempt by corporations to adjust benefits to offset mandatory indexing to maintain a competitive cost position in the world markets, could increase the incidence of labour disruptions and perhaps cause strikes at a time when industrial competitiveness is paramount. This need to compete could cost jobs in Ontario as this province's manufacturers face serious offshore competition, most of it from jurisdictions which do not have costly legislated social benefits.

An analysis of government benefit costs has been provided as an addendum. This shows that whereas the consumer price index has increased by 36.8 per cent from 1981 to 1987, legislated government costs have, during the same period, increased by 141.7 per cent. Based on certain announced changes and using a conservative four per cent increase in the consumer price index, extrapolation of these legislated benefits shows increases up 216.1 per cent by the year 1991, whereas the CPI will have only increased 60.1 per cent in the same period.

It is difficult to project what average pension costs will be experienced by manufacturers under mandatory indexing to add to the above cost projections, as no average plan can be devised for which costs can be assessed. They will undoubtedly be significant, as actuarial costs are estimated at one to four per cent of payroll annually. Each individual plan will have a different cost impact for inflation indexing, as was exemplified earlier to this committee by General Motors, perhaps the largest private employer in the province.

We therefore suggest the real job of this committee should be to implement the pension reform consensus now and not focus on issues such as mandatory indexing. At the very least, the task force recently created by the minister to study indexation should be allowed to complete its mandate and table its report.

Pension plans are a voluntary, or sometimes negotiated, undertaking in Canada and the government must not make pension regulations so burdensome as to defeat the central objective of expanded and, more important, quality coverage.

Mr. Chairman: Do any of the members of the Canadian Manufacturers' Association wish to expand on that, or are you ready for questions?

Mr. Owen: We have made comments about the consensus and, in large part, a number of the positions adopted in the consensus we do agree with. It may save time of the committee if, perhaps, I was to enumerate some of the positions that CMA has looked at.

On improved disclosure: the plan members should have the right to reasonable and regular access to information, respecting their benefits and obligations under the act. We are concerned on that only from the point of view of what, specifically, could be required under the act to provide this actual disclosure to members. However, we do agree that is necessary and is and has been lacking in a great number of instances over the past years.

Regarding full-time employees: we agree with this, but we do have a slight concern--eligibility to join an employer's pension plan after two years of service, regardless of age. We agree, but we have to make observations concerning the age of the pension participants. It may well be that the

pension participants themselves, looking at their lifestyle factor--for example, young people--may be of the opinion that it may be more prudent, especially concerning the ownership of housing, to have their moneys go into something of that nature rather than be mandated into a pension plan. We do believe that it should be, again, within the framework of the plan itself, what actually determines the actual involvement of the employee within the plan.

This, again, applies on part-time employees: we agree part-time employees should be eligible to join an employer's pension plan, but we again believe this should be voluntary. We look at the fact that, in a large number of instances, a part-time employee is not the prime wage-earner and, as such, again it may be additional moneys they are trying to accumulate to, shall we say, keep up with lifestyle from the point of view of what they want.

Also on part-time employee: we have difficulty in looking at the number of dollars rather than the hours worked. We believe the number of hours may be more practical, because in certain instances, even if a part-time employee was to work quite a great number of hours, he still may not be able to maintain the dollar amount that is earned on that. We also feel that should be looked at again.

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We do agree that a separate but comparable plan should be established for part-time employees, because this adds costs to the employer from the point of view that if he has to keep going into a plan and getting actuarial determinations of available moneys, it will cost great amounts, which could be better used.

On the vesting period, we again caution that this could have significant costs, but we agree with the vesting provisions.

On the employers having to fund at least 50 per cent of pensions, we agree with that as well.

We have some concerns about early retirement from the point of view of a plan member who is within 10 years of normal retirement taking his pension. We believe this should not be "may" be actuarially reduced, but "should" be actuarially reduced, because if it is a case that it may be actuarially reduced, it certainly could cause problems down the road. As Mr. Shemeluck has indicated, all this costs dollars and cents right along the line. There is only a certain amount of money that any employer can allocate to perquisites, fringe benefits or whatever, so this is the position that we would urge.

We agree with portability on this. Again, we have certain reservations from the point of view of whether portability is involved with the taking forward of any benefits that could come from future legislation that could roll over into another pension fund which has not incurred the liabilities in the first place.

On the position where a pensioner entitled to a deferred pension dies in service--that is the term, I believe--before the start of the pension is in place, we have reservations. Indeed, we may even be opposed to this in that we believe the age of the recipient is of prime importance here. It may well be that the family that is left after the death is in need of support. However, there are plans within corporations on life insurance, spousal dependency and this type of thing. Again, we suggest that the plan itself should voluntarily

determine what the spousal entitlement should be.

On pension plans not being permitted to discriminate on the basis of sex of a plan member with respect to benefits or employee contributions, again, we have reservations, not sexist reservations, but actuarially determined reservations; i.e., the life expectancy of females is, according to the tables, longer than for males. As such, I think to say that the benefits should be the same is going the other way and is disadvantaging the males.

On interest of prescribed rates, we certainly agree with this.

Those are the positions I would like to state at this time.

Mr. Chairman: Thank you very much. Does that then conclude your presentation, except for questions?

Mr. Owen: Yes.

Mr. Chairman: Mr. McClellan.

Mr. McClellan: I did not even put my hand up.

Mr. Chairman: You had it up before.

Mr. McClellan: Yes. I do have one question of the Canadian Manufacturers' Association.

I am curious to know your understanding of the role of the Friedland task force. Are you expecting the Friedland task force to study the feasibility of mandatory inflation and report back as to whether or not it is feasible and economically viable?

Mr. Sass: From what I can gather, that is our understanding.

Mr. Owen: Yes, it is. This is something we hope the Friedland task force will be given an opportunity to do.

Mr. Chairman: Are there any other questions of the CMA?

Mr. Lupusella: I have a question about page 4 of your brief. On page 4 of your presentation you talked about the percentage increase of 36.8 per cent from 1981 to 1987. Then you mentioned 141.7 per cent increase in the same period based on government costs, which I do not understand. You give me a definition of the government cost affecting this increase.

Mr. Owen: In the addendum, Mr. Lupusella, we have identified government costs as being specific; the Canada pension plan, unemployment insurance contributions and workers' compensation. We did initially look at the Ontario health insurance plan and decided to take OHIP out because not everybody is advantaged by having an employer pay either the whole or part of the OHIP premium. So we have excluded those, and we have remained solely within the framework of the Canada pension plan, the UIC and workers' compensation.

Mr. Sass: The other thing that this takes into account is the hypothetical employee at the average industrial wage. It not only includes the rate increases in these various taxes but also the coverage increases. When a coverage for Canada pension or unemployment insurance is increased therefore

the payment for it is increased without any rate increase at all.

Mr. Lupusella: Thank you very much. Now I understand the relationship between the cost which is included in the addendum to your brief. I understand that in the last part of the same paragraph you talk about 216.1 per cent increase for the year 1981 based on the legislative changes included in Bill 170.

Mr. Owen: No, sir, we have not included Bill 170 at all in this because we find it is difficult to do. Each pension plan has to be reviewed in its own right. I do not believe any pension plan can be said to be an average pension plan. I do not believe there is such a thing as an average pension plan. Each is subject to negotiation. The only thing we have included here is the assumptions on the Canada pension plan of which we are aware that the federal government has come out and indicated what the maximum increases will be and the employer contribution rates.

The unemployment insurance, of course, is difficult to do because we have to wait for budgets to find out what the actual increase in the UIC will be in each budget that the federal government do, to table. However, we have based the maximum insurable earnings for the UIC solely on a rate equal to the consumer price index, which we have assumed to be the annual price change of four per cent. We have been very conservative on this. Had we gone further and said that we are expecting a period of inflation, we could have gone to five, six, seven, maybe even greater. This would have, in our opinion, skewed these figures and it would not have left the credibility that we believe these figures should be given.

Mr. Lupusella: Thank you very much.

Mr. Shemeluck: I think page 7 of our addendum very graphically illustrates what they are suggesting. Page 7 essentially provides a measurement of the government mandated benefits historically, and what we are incurring at this time from 1981 to 1987 for those that manufacturers and most other employers in Ontario have to pay compared to the CPI.

Looking at CPP, UI and, of course, workers' compensation, looking at a graphic illustration on page 7, showing on a scale of 320 to see where each of these different programs go. Next we will be looking at our relationship of a 216 to a 36 per cent.

If you go to page 8, you then take a comparison, where you look at the average manufacturing wage in Ontario, which has exceeded the consumer price index over the seven-year time frame from 1981 through to 1987, but unfortunately, the mandated government programs and the benefit aspects have significantly exceeded either.

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Mr. Owen: If I could also make one comment on the workers' compensation projections here, we have stayed solely within costs that manufacturers are absorbing at this moment and the projection of costs that we anticipate. We have not included the unfunded liability in these projections at all. I think we all understand that this could be anywhere from \$4 billion to \$6 billion. Where is that money coming from? Again, we wanted to lend credibility to the projections to show that without these skews going, and people saying, "You are skewing them on purpose," these will be additional costs that somebody will have to shoulder eventually.

Mr. Chairman: I believe those are all the questions. Thank you for your presentation.

Next, we have Kenneth G. Brown Associates; Mr. Gorham and Mr. Gow.

KENNETH G. BROWN ASSOCIATES

Mr. Gorham: I am Peter Gorham, and David Gow is the senior associate. We are a firm of employee benefit consultants. We would like to thank you for the opportunity to present our comments. What we would like to do first is to identify a few areas where we have concerns with the details of the act and then to take a general look at what the future holds for pensions.

First, with unisex and the 50 per cent employer contribution, we will avoid continuing to prolong debate about whether unisex is necessary, but in this case, the unisex requirement under the act affects mainly money purchase plans. The requirement as far as those plans are concerned is that the amount of pension paid monthly must be the same without regard to sex. This may be accomplished by either the purchase of a unisex annuity or the purchase of a sex-distinct annuity, but the funds used as a single premium to purchase it are altered so that the benefits are the same, regardless of sex.

We have made a survey of insurance companies offering annuities, and with very few exceptions, unisex annuities are just not available. The market may come around with time, but only if a way to protect the insurance companies from anti-selection can be devised. Even the Pension Commission of Ontario does not seem to be as interested in unisex annuities as it might. We have been waiting for more than a year now to hear if an annuity we have designed is acceptable to it.

The most likely method to be used to provide these sex-indistinct benefits will be for each plan to apply a combination of male and female annuity rates, as quoted by an insurer with the best price. Having determined the amount of monthly benefit, which would be sex-indistinct, a sex-distinct annuity is then purchased.

For a pension plan where the employer contributes an amount equal to the employee, which is the most common kind of money purchase plans, this means that the actual single premium for women will be more than twice the employee contribution. For men, it will be less than twice the employee contribution. Therefore, every time we purchase a male annuity, we violate the 50 per cent employer contribution. We feel the act ought to be amended to make it clear that this 50 per cent employer contribution does not apply in this situation.

Any pension benefit earned for service prior to 1987 must be at least equal in value to the employee contributions plus interest. The benefit to be used in this computation is based on the plan formula as of December 31, 1986. Any future amendments cannot be taken into account.

This could have a major impact on career average and flat benefit plans. Under these plans, it is common for employee contributions at younger ages to be greater than the value of the pension earned. These excess contributions gradually are used up in later years as the earnings base is updated and as the value of pension earned begins to exceed the employee contributions.

We understand that the Pension Commission of Ontario's interpretation is that the benefit, as of the end of 1986, must be increased, if necessary, to make it have a value at least equal to the accumulated employee contributions.

This augmentation may not be used as an offset to any future amendment, even if that amendment increases benefits for pre-1987 service.

Most career average plans are implemented by smaller employers who want some cost control but appreciate the value of defined benefit arrangements over money purchase plans. The intention is to periodically update the earnings base and thereby mimic a final earnings plan without writing a blank cheque to be cashed in the future.

When this provision is applied to a final earnings plan, salary increases after December 31, 1986, are taken into account, thereby increasing the accrued benefit, but any earnings base increase for career average plans is to be ignored. We believe this is inequitable. It also hits the smaller business while generally sparing the larger company. This inequity is also at odds with the proposed federal income tax reform, whereby career average plans and final earnings plans are treated similarly, on the basis that career plans will be periodically updated. Similar arguments can be advanced for flat benefit plans.

We believe the act should be amended to permit these post-1986 amendments affecting pre-1987 benefits to be available in satisfying this particular requirement.

Discrimination on the basis of marital status: Where a pension plan provides a joint and survivor annuity as the normal form of pension, the act requires that if there is no spouse, the benefit must be actuarially adjusted, which in most cases you can assume means it will be increased. The result is that the value of the pension to a married employee is the same as the value to a single employee. The amount of monthly pension will be different.

This is a complete about-face from the method required by the act for eliminating sex discrimination, where it is the value of benefit that may differ but the amount of benefit that must be the same. If you want to require that equality means equal benefits but not equal value in one case, then consistency requires that the same definition be applied in other situations.

That is not all. There is another problem with this equal value approach to the joint and survivor benefits, and we think it is one that possibly the pension commission overlooked in drafting the act. Almost all plans with joint and survivor benefits look at marital status on the date of retirement. If the member is single, then a single life annuity is given; otherwise, a joint and survivor annuity, based on the life of the member and the life of the spouse, is given.

There are some plans where the spouse is defined as of the date of death. One plan with this provision of which we are aware is the Presbyterian Church in Canada. We also consult on two other plans which have a similar provision. Just to make it clear, we are not consultants to the Presbyterian Church in Canada.

Under these types of plans, a member who is single at retirement could later marry, and upon death, the spouse would qualify for a benefit. Further, a married member could retire and subsequently remarry. Under the usual type of joint and survivor benefit, the second spouse would not be entitled to any survivor pension. Under the church plan, the spouse would get a benefit.

It is impossible under these types of plans to determine the value of the benefit to a member at retirement. The value is effectively not fully

determined until the member dies. There could be great difficulties if this provision were to remain as it is and be forced upon the Presbyterian Church and other plans.

We believe that the definition of "spouse as at the date of death" provides a greater social benefit than the regular definition. For these two reasons, we recommend that this equal value provision of the act be removed. At your leisure you may care to take a look at the last page of our submission, where there is an example of this at work. We will not go through it right now.

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Guarantee fund assessment: We are concerned about a proposal in the draft regulations under the act that sets the guarantee fund assessment to be \$1 per member plus 0.2 per cent of the solvency deficiency, and the solvency deficiency is defined in the regulations. This means a plan with assets of \$15 million and a solvency liability of \$7 million, which is not an unrealistic scenario, will be required to contribute to the guarantee fund. This strikes us as ridiculous, since such a plan is unlikely ever to need the guarantee fund.

I would like now to take a brief look at the future of pensions and to make a few general comments. There is a great deal of pressure, both real and perceived, on defined benefit plan sponsors to switch to money purchase plans. Some of it has to do with the added administrative work that will be required as a result of this act and the regulations. Some of it is the result of the added costs of the new provisions. Much of it is as a result of the uncertainty over surplus ownership and the possibly large cost impact of indexing.

Money purchase plans are the in thing at present. The company has a fixed cost with no unpleasant future surprises. There will be very little surplus ever developed, and employees will get all the benefit of good investment experience. Over the past five years, the median pension fund, as measured by SEI Financial Services, earned a real rate of return after inflation of 11.8 per cent per year.

It seems that every company in the pension market has a hot new product for money purchase plans. We have yet to find a company that is offering a great new product for defined benefit plans. These companies are exerting a lot of pressure on plan sponsors to switch to the new product. There are certainly many employers best served by a money purchase plan, but money purchase plans do have their drawbacks.

The money purchase plan provides the members with an identifiable pool of funds for retirement. The actual amount of benefit is unknown until retirement. All investment earnings go to the employee. During the 1980s this was the best type of plan to which an employee could belong, but this was not always the case. Any member of a money purchase plan who retired in the mid-1970s really took a beating. During the 1960s the pension fund probably was earning just over two per cent real rate of return. Unfortunately, if you call it unfortunate, earnings were increasing at about three per cent over inflation.

Things seemed to turn around in 1971 and 1972 with eight per cent and 13 per cent real investment yields. Then came 1973 and 1974, when the losses were 12 per cent and 24 per cent on the pension fund. This was somewhat offset by

the fact that wages did not go up by as much as inflation during those two years.

In the 15-year period from 1960 to 1974, average wages went up by 154 per cent, inflation by 78 per cent and the median fund earnings by 108 per cent. This is simply the other side of the coin from the recent past. If you were unlucky enough to retire in 1975, your pension fund was down in value and you needed all the assets just to begin retirement with an acceptable income level. There would have been no question of putting aside some money to provide for future indexing, which as we now know was badly needed by those people.

The member who retires today could conceivably go out with a total pension, including the government benefits, Canada pension and old age security, of 100 per cent of preretirement earnings. We have looked at two employees, one hired in 1940 at age 29 and the other hired in 1950, also at age 29. We assume they were both in a pension plan from day 1, a money purchase plan, and after 36 years of working at the average industrial wage, with money purchase contributions totalling 10 per cent each year--and it does not really matter whether it was employee or employer, how it was split--both members retire at 65. In each year, we assume the fund earned interest at an average rate, and that rate is detailed in the appendices.

The older employee retires in 1975 on a pension equal to 39 per cent of his final earnings. The younger employee retires in 1985 and gets 64 per cent of his final earnings; a difference of 25 per cent. In addition to this, there are the benefits from the Canada pension plan and old age security. This is by no means the most dramatic example of differences due to timing that we could find.

We must not let the recent good past for money purchase plans cloud our memory of what can and likely will happen in the future.

A defined benefit plan acts much like an insurance policy. The plan member knows that post-retirement income will be a certain percentage of pre-retirement earnings. There is no risk to the member from poor fund performance and lost purchasing power due to pre-retirement inflation. The risk element is removed giving the member more freedom in planning other financial matters.

Defined benefit plans cover about 44 per cent of employed workers in Canada, and that is about 93 per cent of plan members. Money purchase plans cover about three per cent of workers or six per cent of plan members. However, the majority of plans are money purchase. This is usually interpreted as indicating that money purchase is the type of plan favoured by the smaller employer, but that once a company grows and develops the required financial strength, they favour the defined benefit approach.

In Ontario, 47.6 per cent of the employed and paid labour force are covered by pension plans. This means that the majority of Ontario employed and paid labour force are not covered by pension plans.

Let me tie all of this together. It would seem that we are in a position where less than half the employed people have adequate retirement income possibilities and that, rather than addressing that issue, we are trying to improve the benefits for those who are lucky enough to have pensions. But in the course of doing that, we risk imposing so much burden on the employers that many of them could bow to the pressure to either convert to a money

purchase arrangement or wind up their plan entirely.

Much of what is included in the act is needed. We support fully the two-year vesting, full locking in of contributions, transfers to registered retirement savings plans, the requirement for a joint and survivor pension unless the employee and spouse elect otherwise, and many other items. We also believe that indexed pensions are needed. The problem is that indexing is of almost no use to employees who have no or inadequate pensions. There is also the problem of the overall cost of indexing in social terms. Can we afford to have even 10 per cent of plan members get lower benefits because plan sponsors cut back on plans or cut them out entirely?

The most important issue which you as a committee must grapple with is that of the effect of this act on the future of pensions. You must not risk destroying much of what has already been accomplished. You should be laying the foundation for future growth of the system so that all workers can expect to retire with adequate pensions.

We would like to close by offering our congratulations to the employees of the Pension Commission of Ontario for the tremendous job they have done in drafting the act. We find it to be well organized and very easy to understand and we do appreciate their efforts.

Mr. Gow: We are proposing to deal with questions, but I would like to make one comment. Lest this scenario appeared a little self-serving, I would like to assure you that it was not. If you can recall a period in the mid-1960s, annuity rates were very low because investment returns were not high on long-term investments, which resulted in having an effect on annuity rates. Yet at the same time, fund performance was not good. On several years, we had years where big funds had deficit years.

We are worried about the trend to money purchase pension plans and we are worried about things that cause pressure for that.

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I would like to give you one last example of a concern we have. I suppose I have it more than Mr. Gorham because I am dealing more directly with clients in the field. Under a pension plan, if a person has a pension of \$1,000 a month on an earnings-related basis or some other method of defining the benefit, he has \$1,000 a month and that is what he has; but under a money purchase plan that probably equates to \$100,000. He looks at the \$100,000 and he does not think of that in terms of \$1,000 a month. He looks at it as \$100,000, a lot of money, and he remains convinced that he can do better with the money than the annuity or pension that would be the equivalent.

One of the practices that the commission has had for a while has been to allow employers to treat employees who retire early as though they were terminations, and let them take 25 per cent, plus the pre-1964 amount, into a non-locked-in registered retirement savings plan, where it disappears from the pension system.

That has been changed under the proposed new act, in which the commutation is out and the pension is locked in, but it has given rise in the past to people watering down their pensions by taking out funds that were available to them. My only concern is that the cost of pension can look like a very big number and like something that someone should be doing something about. I think it is a little deceptive.

Hon. Mr. Kwinter: I would like to congratulate you both. I think that is a first-class presentation. I particularly appreciate the fact that you used some concrete examples so we can deal with it in a real sense instead of in the abstract, dealing with concepts and principles. I just want to thank you for it. I thought it was first rate and I appreciate it.

Mr. Chairman: Are there any questions of these gentlemen?

Mr. Lupusella looks like he has a question.

Mr. Lupusella: No. I do not have a question. I think you were able to demonstrate in a very clear and concrete way the inequities of the act at present. I was particularly impressed by the last paragraph of your presentation on page 1, which deals with contributions of women and men and a discriminatory practice which should be eliminated. I think the minister took note of that. It is an inequity of the present act, and I am sure something should be done about it.

Mr. Pollock: Does the type of plan that the Presbyterian Church has cost more?

Mr. Gow: It depends on who is the spouse at the time of death. If it is the same spouse as the spouse at the time of retirement, if there is a spouse at retirement, then you could say there is no more cost. We were not able to obtain our other clients' permissions to use their names in this submission, but it is not just the Presbyterian Church. We have two other sizeable clients.

Although traditionally and statistically females outlive males, there are a number of cases where the female dies first and the male remarries or the spouse of the worker dies first and the retired worker remarries. In that case, we do feel that the second spouse is cut off.

Your question is, does it cost more? We really do not know. Is that safe?

Mr. Gorham: Yes.

Mr. Gow: If you could tell me when the spouse is going to die, we could tell you which plan is going to cost more.

Mr. Pollock: Okay. In most plans, though, if the first spouse dies, regardless of male or female, the plan terminates.

Mr. Gow: It terminates on the member's death. You have member and spouse. The spouse dies, and when the member dies, that is it.

Mr. Pollock: Yes, but in the Presbyterian Church plan, and you say in other ones, he can remarry and the second spouse gets benefits too.

Mr. Gow: Technically, what the plan does is start a pension on the regular--this works better with defined benefit; it works on the amount of pension to which the man is entitled. If you were talking about it in terms of annuity purchases, you would annuitize on a life-only basis on the member and when the member died, you would then buy an annuity on the surviving spouse for the appropriate amount. That is the simplest way to handle it. It depends on whether the spouse at death is the same as the spouse at retirement.

Mr. Pollock: That must be in keeping with some of John Knox's views:

What will be will be, and there is nothing we can do about it.

Mr. Gow: Quite so.

Mr. Chairman: Your reference to the Presbyterian Church has them all asking questions. Mr. Lane has one too.

Mr. Lane: Not to do with that, Mr. Chairman.

Could you speak briefly to your graphs on page 7? I do not quite understand the three different scenarios there.

Mr. Gorham: The top graph is a graph of the number of members who are covered by the different types of plans. In other words, about 60 per cent of members of pension plans are members of final-earnings-based plans and six per cent are members of defined contribution plans, to pick two of the items.

When you come down to the bottom of the page, that is a chart of the number of plans, which shows that 51 per cent of plans are defined contribution. So 51 per cent of plans are defined contribution and six per cent of members of plans are in the 51 per cent of the plans. It basically is there to say we are talking small plans.

Mr. Chairman: Are there any other questions? I would like to thank you very much, gentlemen. If we were giving prizes for briefs, you would be right at the top, but there are more to come, so you may lose the prize yet.

The next presentation is from the Canadian Life and Health Insurance Association: Mr. Devlin, president, Mr. Speed, vice-president, and others. I will ask Mr. Devlin to introduce and identify each of the people with him.

CANADIAN LIFE AND HEALTH INSURANCE ASSOCIATION INC.

Mr. Devlin: Thank you, Mr. Chairman. I am also pleased to note your last remark, that we are still available as a candidate for the prize. We will try our very best.

We appreciate this opportunity to express our views on Bill 170. As you commented, I am president of the Canadian Life and Health Insurance Association, which is a trade association representing life and health insurance companies in Canada. Our member companies do 98 per cent of the life and health insurance business in Canada. They are also the funding agency for more than 70 per cent of the private pension plans in the country, covering approximately 13 per cent of private pension plan members.

On my right is Tom Goldberg, who is vice-president, group, of the Standard Life Assurance Co. and a member of CLHIA's committee on private pension plans. Standard Life is a major pension underwriter in this country.

On my left is Frank Speed, the vice-president of our association and someone who over the last few years has demonstrated right across Canada that he is quite an expert in the pension area. Mr. Speed is also president of Uniform Pension Plan Services Inc., which is an independent company formed through the members of CLHIA to ensure that even the smallest business can sponsor a pension plan for its employees if it wishes.

You have briefs from both the CLHIA and UPP Inc. indicating our concerns about Bill 170, and I hope you have had an opportunity to view them. We are

appearing today to emphasize our concern about the potentially adverse impact of Bill 170 on coverage of the labour force by employer-sponsored pension plans.

Throughout the years of debate on pension reform preceding the introduction on Bill 170, a theme that always came to the fore was the need for more workers to receive benefits from employer-sponsored pension plans. Indeed, that was the focal point of the great pension debate, as they called it, in 1981 in Ottawa, in which we participated.

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Only about 47 per cent of the employed paid-labour force in Canada is covered by employer-sponsored pension plans. That objective, better pension coverage, seems to us to have been forgotten or at least pushed far into the background in the current debate over how far to go in providing better pensions for those already fortunate enough to be participating in private pensions.

I do not want to be mistaken. For many years, the life insurance industry has been a strong supporter of pension reform. We have sought better pensions as well as better pension coverage. Thus, we endorse most of the minimum benefit standards contained in Bill 170, such as earlier vesting and locking-in of contributions, improved portability, mandatory survivor benefits, mandatory eligibility requirements and a minimum employer contribution.

We have also taken some other initiatives aimed at improving the private pension system. In 1980, we developed a system for the portability of pension service among private pension plans. In 1981, we presented to the National Pensions Conference a proposal for a system of mandatory private pension plans. In 1982, we introduced a pension plan designed specifically to meet the needs of small businesses, the uniform pension plan.

We have been among a very few in the private sector to advocate a degree of mandatory inflation protection on a prospective basis for private pension plans. It is evident to us, however, that this is not the right time to introduce mandatory inflation protection. There is too much opposition among employers, and perhaps with some justification, considering the uncertainties and anticipated increases in costs from pension, taxation, pay equity and probably a host of other legislation.

It would really be a mistake to take too lightly the prospect that existing plans will be changed in a way that is not in their members' long-term interests, or even discontinued. In our opinion, trading off lower pension coverage for mandatory inflation protection would not be wise.

Of greater concern to us is the situation of workers in small businesses. They are the forgotten people under Bill 170. Few of them will have even the prospect of an employer-sponsored pension plan unless the bill is modified to reflect their interests. Small employers simply will not be able to countenance the mountain of red tape that will be imposed on pension plans. The cost per plan member of providing pension services to small employers will be simply uneconomic. Innovative plans such as the uniform pension plan that I spoke of earlier may well be driven out of business by the inflexibility of the legislation.

These problems are discussed in some detail in the submission that you

have from Uniform Pension Plan Services Inc. Small employers are already fleeing pension plans; some are turning to registered retirement savings plans. In our view, that is not a positive development for workers of average means. Employer-sponsored pension plans provide for an employer contribution and are likely to be of more benefit to lower-income employees than RRSPs, which are normally based solely upon individual contributions.

Furthermore, pension plans with the requirement of a joint and survivor pension provide more assurance of a pension to the employee's spouse than do RRSPs. With an RRSP, employers can be more selective as to whom they provide pension benefits, since they are not subject to the eligibility requirements of pension legislation. With the easing of RRSP regulations, RRSPs are more likely to be used as income-averaging vehicles than are pension plans, which are subject to locking-in and lifetime payout requirements of pension legislation.

In general, we feel that the continuing trend towards easing RRSP legislation while pension legislation is made more burdensome is discouraging the expansion of pension coverage and is not working to the benefit of workers of average means.

In summary, we would urge the following:

1. That your committee consider carefully the effect of this bill and of any proposed amendments on coverage of the work force by pension plans.
2. That inflation protection not be introduced at this time, since it will undoubtedly have an adverse affect.
3. That less onerous reporting and administration requirements be imposed on small pension plans in the interests of encouraging plan sponsorship by small businesses.
4. That some flexibility be introduced in the bill to permit the acceptance of innovative and unforeseen, but perhaps still valuable, arrangements, such as the uniform pension plan.

My colleagues and I would be pleased to answer any questions you or your committee may have. Thank you very much, Mr. Chairman.

Mr. Chairman: We have a prize for being clear and concise too. You win that one.

Mr. Grande: Just one question: You are suggesting that there is too much opposition among employers to mandatory inflation protection at this time. Can you give us some idea, as far as you are concerned, of when the proper time would be? When will the criteria be right for mandatory inflation protection in the province? In other words, when will employers support it?

Mr. Devlin: That is an excellent question. I do not think anybody is going to put a time limit on that, to say six months, eight months, maybe two years, but certainly it would have to be some time after the costs of just doing these reforms we have in front of us have been absorbed and employers and the economy have come around to the position where they think they can more readily afford it. We hope that the economy will turn around and that we will have an economy able to provide for this kind of cost being undertaken by employers.

I do not think anybody could fix a time for that. It will be dependent upon the employers' outlook and the economic outlook as to whether these extra costs and burdens could be afforded. Tom Goldberg is actually involved in talking directly to employers in the sale of some of these plans. Mr. Goldberg, have you had direct conversations with employers on their feelings?

Mr. Goldberg: Yes, I have and I echo the comments of Mr. Devlin. It is difficult to put any time limit on when this type of situation, inflation protection, could be put into pension plans. As Mr. Devlin points out, in effect, the employers and plan sponsors at the moment are concerned about the impact of the existing legislation. I think the indications they have had up to now have been that inflation protection is not something that is going to be mandated or put into the existing legislation.

Their comments are: "Let us absorb and digest the existing legislation as we have come to anticipate it. At this time, inflation protection is something we are not prepared to adopt and we cannot accept because of the potential aspect, the impact of an unknown quantity." These are the concerns that business people have been putting forward to us. These are specific concerns from individuals and business sponsors.

Mr. Devlin: Actually, Mr. Grande, we find this question difficult for us because, as I said earlier, we are one of maybe not too many organizations that actually favour some form of inflation-proofing of pensions, if you like. We are not backing away from that in principle. In principle, we think this should really and truly be looked at at some time. It was even more serious when we were going through the inflation period, where we had 15 and 20 per cent inflation rates in the consumer price index.

In any event, our position is that given the improvements you are already trying to achieve, we should let the employer segment in the economy absorb these costs and then take a hard look, not for ever letting it go or delaying it, but at some future time. I think people would know when the economy was geared up and looking better and employers would feel they could handle that.

Mr. Lupusella: In the course of different presentations made by deputations before this committee, we heard comments that if mandatory inflation protection were implemented under Bill 170, small employers would leave the private pension plans in the province. What is the impact on your operation if such a prediction is true?

Mr. Speed: Our industry is most active in the provision of pensions for small employers, and most of those pension plans are money purchase pension plans, so the impact on our industry from a business sense is not particularly frightening. Nevertheless, we do feel there is a role for money purchase plans and there is a role for defined benefit plans. We feel the best type of a plan is the defined benefit plan and, therefore, anything that works in the direction of moving employers away from defined benefit plans, with their greater assurance of a pension at retirement, is not necessarily a good thing.

Our member companies do service large employers too, but as you may have noted from the statistics Mr. Devlin quoted, we serve largely small employers.

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Mr. Guindon: I have a question in regard to small employers. You

seem to say that Bill 170 will just about put a cap on any new small employers offering pension funds to their employees. Is that right?

Mr. Devlin: That is true.

Mr. Guindon: Is that mainly for reasons of cost?

Mr. Devlin: Maybe I could get Mr. Speed to answer. He is president of UPP Inc., which is an organization devoted solely to servicing the small employer market and trying to encourage small employers into it. I think he has given this a lot of thought.

Mr. Speed: The problem for a small employer is that what is of maximum interest and essential to him is a plan that has a very simple administrative procedure. Small employers will not really get involved in something that is very complicated.

There are two aspects that are working to discourage small employers from establishing pension plans. One is legislation such as this, with extensive recording requirements and extensive requirements for providing information to members and that sort of thing.

The other aspect is the tax legislation, which is in effect saying to a small employer, "Look, you can have a registered retirement savings plan without all this rigmarole you have to go through if you have a pension plan that has to be registered under pension legislation." These two things are both working to move small businesses away from pension plans.

In our own plan, in the uniform pension plan, we have statistics over the last three years to indicate that this is happening. Fewer employers are taking out pension plans and more small employers who have pension plans are cancelling them. Whether they are moving to RRSPs or just not having a plan, we cannot tell.

Our experience is paralleled by insurance companies that are marketing other pension plans to smaller employers. There is a definite trend there and we think it is an unfortunate one. It is unfortunate because we think the average income earner is more likely to have pension benefits out of a pension plan where contributions are made by the employer than out of an arrangement such as an RRSP where it is basically a personal savings arrangement.

Mr. Devlin: Just to supplement those remarks, when we designed the uniform pension plan and the industry got together to want to do this, I think we had just come out of that pension conference in Ottawa in 1981 and coverage was so important. We were out there in the forefront saying, "You must do something about this." We thought, "We should not wait for legislation to do something, we should not wait for governments to do something; let us as an industry, because we have an interest, do it ourselves."

What we did is we designed a plan, that is a base plan, that we got pre-approved by all the authority and regulatory aspects. It was pre-approved by the feds for a pension so that all those pre-approvals as a pension fund were approved. It was pre-approved right across the provinces. Any small employer who wanted to take this on did not have to run around getting somebody to do all the design work or get involved in all that.

We thought we would remove as much red tape as possible. All he had to fill in were the small numbers of what he wished to contribute and what he

thought his employees wished to contribute, because it was a money purchase plan. In the small employer market, that is what they are interested in; controlling their costs. We tried our darnedest to do something about the coverage issue and we think it is regrettable that this bill will have an opposite effect. It will really discourage small employers from coming in and maybe, as Mr. Speed has related, some of them will actually withdraw.

Mr. Speed: Interestingly enough, the most effective marketing tool we have for our plan is the statement that the employer has no involvement with government in this pension plan. There is a perception among small employers that pension plans are smothered in red tape. It is not just under this bill; there is that perception there already. I think the fact that we have been able to say to them: "Look, we have a plan here where we have done all this. We have worked out arrangements with the authorities where we will look after everything for you and you simply make sure you pay us your contributions and make sure you deliver the documentation we give to you," that is the most effective sales inducement we have in selling this plan.

Mr. Goldberg: If I may add just a short remark, I am personally involved with the marketing and sale, if you want, of pension plan products and packages to small employers. One good thing the media coverage has done, and perhaps all the coverage with respect to pension reform, is that people out there are much more aware of pension concerns and pension problems.

The questions that are asked of us--and these are unsolicited questions--are: "I see all these particular concerns and I notice all this pension reform. Would I be better off looking at a pension plan or perhaps simply a registered retirement savings plan situation?" They are aware of the concerns, the flexibility involved with an RRSP and the payout options; I think the points that have been mentioned by us in our presentation. There is no doubt in my mind that, given the option, small business sponsors will opt for RRSP situations in lieu of pension plans. This type of situation will perhaps have a detrimental effect on pension coverage. There is no question in my mind that is going to be an effect.

Mr. Chairman: We have just a minute. With the opting to RRSPs, what is the detrimental effect on the person we are here to consider, the employee or the pensioner? What is the detrimental effect of an RRSP versus a pension?

Mr. Goldberg: The detrimental effect or impact, as we have pointed out, is the coverage aspect. Under an RRSP, there is no requirement to include your employees, for example, among the eligible individuals for the plan. So you are looking at small businessmen, individuals involved in small businesses, looking around, obviously with a very tight budget. They are concerned about the potential impact of the pension plan and the legislation. They say to themselves, "Maybe I will include myself and two or three others in this particular scheme." With an RRSP, you can do that; with a pension plan, you cannot. They opt for the RRSP because they can control their budget and they have no concern about the red tape and the impact of future concerns on the legislation. It is a much more flexible vehicle and it enables them to do things within budget, etc.

That is the detrimental effect I am talking about. It is a coverage concern, that you are not going to increase coverage at the end of the day by putting through this type of legislation or imposing certain aspects of the legislation, because small plan sponsors are concerned about these effects and say to themselves, "I can achieve almost the same thing, if not the exact same thing, by opting for an RRSP, and I can set the eligibility requirements, etc." They have much more flexibility.

Mr. Speed: Could I just add to that? If it is felt to be appropriate in pension legislation to put in requirements, for example, for the locking in of contributions so that money will be there to provide a pension at retirement, if it is felt desirable to require that there be a joint-and-survivor benefit so that the spouse will have some expectation of pension at retirement, then I would say it is wrong for that same legislation to say: "That is fine for large employers, but we are not concerned about small employers. If you move to an RRSP, that is fine." That is, in effect, what is happening and we say that is inconsistent and it is wrong. If it is good for employees of large employers, it is good for employees of smaller employers too.

Mr. Chairman: Yes, but when we are considering this bill, it is the employees we are considering, is it not? That is what pension legislation is about; what happens to the employees upon termination.

If I was going to you as a small employer, or whatever size you are--but let us say a small employer--and one of the conditions of employment was that I would not be involved in a pension plan because you did not have one, but I was being involved in a pre-agreed contribution to an RRSP, what is the disadvantage to me? You mentioned one, I think, which is the survivor benefit. What is the other disadvantage to me?

1150

Mr. Speed: That is not the focus we are looking at. What we are looking at is that we want you to have that kind of option available. We want to have a situation in which the employees of these small employers will have an opportunity to participate in one of these arrangements.

If you come to a situation and you have an RRSP that is designed exactly like a pension plan, then the only differences really are differences of whether the contributions are locked in to retirement, whether there are survivor benefits and so forth. You might say: "To me, it is better to have an RRSP, because I have more flexibility. If I want, I can cash out this money. I have some control over what I do with this money at retirement."

You may say that is an advantage to you, but if that is an advantage, if that is felt to be a desirable objective of pension policy, then why is it not desirable for other employees? Why discriminate between the employee who is going to a large employer and one who is going to a small employer? I think the benefits of pension legislation should be there regardless of the size of the employer.

Mr. Devlin: For average workers, it is a good idea to have employers making contributions, because typically speaking, over the long haul you are going to get a better sort of total contribution made on behalf of the employee where you have the employer contributing something to the exercise. You ordinarily do not in an RRSPs. It is solely for the employee to contribute to.

Hon. Mr. Kwinter: There is another aspect that has been touched upon. If you enter into a pension plan, then it is universal and for all the employees in the company. If you go to an RRSP, then the employer can designate his key employees, "You are qualified, but you are not." That is one of the major disadvantages.

Mr. Devlin: Absolutely.

Talking about employees, we have so many more women employed in the labour force today, many of them working sort of on a full-time/part-time basis, if you like, that probably they would be the very ones to get shortchanged. It is too bad, when you already know that two thirds of those living below the poverty line today in Canada are women, that we will perhaps do something that really does not help or assist in that process of getting more coverage for more workers. I think it is very key and very vital.

Mr. Speed: There is a statistic you may not have noticed in our submission, but of the uniform pension plan members, 40 per cent are women. We think that is a significant statistic. It is higher than in pension plans generally, and although we do not have the statistics for RRSPs, I am sure it is considerably higher than the percentage of RRSP owners who are women. Also, if you look at the contributions to our plan--and our plan is fairly modest; I believe we have 470 employers participating at this time--the average contribution is something of the order of \$2,000 per member, which suggests to me that this is not the owner who is participating, but the people who are working for small employers who are benefiting from the fact that their employers have chosen to put in a pension plan.

Mr. Chairman: The point I was trying to get at is that each of the submissions we have heard--not each, but the ones we have heard that are opposed to mandatory indexing say it will lead employers to do other things. I am trying to get a handle on what is the matter with those other things.

Mr. Devlin: I suppose the minister gave you--I am sorry, go ahead.

Mr. Chairman: He gave us an escape clause, yes.

Mr. Goldberg: One of the other things is the fact that they just eliminate pension plans altogether, and that is certainly not something this committee is supporting. I think that is one of the alternatives which perhaps employers would be faced with today if that were the situation, as hard and as rough as it may sound. Certainly, that is not an option that anyone wishes to consider at this time.

To refer to your previous question, one of the concerns you were talking about with respect to existing employees who are now members of pension plans, for the most part we support the legislation as it exists, but that does not do anything to assist those individuals who are not currently members of any type of retirement savings scheme.

Perhaps that is the thrust of what we are trying to deliver here today. How do we increase and improve the coverage for those individuals who are not members of schemes today? By imposing significant amounts of red tape and difficulties, you are not going to increase that coverage. That is a concern that should be addressed in our view.

Mr. Chairman: I agree with that. I was an employer myself and I had complete profit sharing at the time. It goes back 12 years with politics in between. I did not have any pension plan, but they were all very happy with that arrangement. If I was going back into business today, which the Liberals would like to force me to do, what do I do?

Mr. Epp: When can you start?

Mr. Chairman: I am assuming I would be a responsible employer and I would probably do something, whether it was profit sharing or registered

retirement savings plans, to get around the red tape the Liberals are about to impose upon us. That is a different assumption. I was really on a personal question, I guess. Would I be doing it and would I put everybody on it?

Mr. Speed: We are not putting the knock on these other arrangements, profit-sharing arrangements, RRSP arrangements or whatever. I think they are all useful in certain circumstances and perhaps that is the choice, but what we are saying is that pension legislation should not discourage employers who wish to have pension plans from doing so. We think that is what is going to happen and what is happening here. In the end, if the legislation has a neutral effect, then we as marketers of pension services have to go out and persuade the employers that it is a good thing for them to install a pension plan, but we just do not think we can do it under the legislation as it is emerging, coupled with the tax legislation that is emerging.

Mr. Chairman: Thank you very much. It being 12 o'clock, we will stop until two o'clock.

The committee recessed at 11:57 a.m.

STANDING COMMITTEE ON GENERAL GOVERNMENT

PENSION BENEFITS ACT

THURSDAY, APRIL 16, 1987

Afternoon Sitting

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EWN 719

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Polsinelli, C. (Yorkview L) for Mr. Offer

Also taking part:

Caplan, E. (Oriole L)

Clerk: Deller, D.

Staff:

Kaye, P., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Financial Institutions:

Kwinter, Hon. M., Minister of Consumer and Commercial Relations and Minister
of Financial Institutions (Wilson Heights L)

Salamat, G. P., Director of Pensions

From the Ontario Nurses' Association:

Lynn, G., President

Beggs, D., Research Officer

Slattery, G. C., Chief Executive Officer

From the Trustees of the Plumbing and Pipefitting Workers' Benefit Plans,
Local 67:

Tweedie, J., Chairman

DeLisser, P., Administrator, Trusteed Benefit Plans

From the Ontario Confederation of University Faculty Associations:

Starkey, J., President

Epstein, H., Executive Director

Individual Presentation:

Danyshyn, S.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday, April 16, 1987

The committee resumed at 2:01 p.m. in room 228.

PENSION BENEFITS ACT
(continued)

Consideration of Bill 170, An Act to revise the Pension Benefits Act.

Mr. Chairman: According to my clock it is two o'clock or more. We have a presentation from the Ontario Nurses' Association. We have with us Gloria Lynn, who is president; Glenna Cole-Slattey, who is chief executive officer; and Darcie Beggs, research officer. Would you please continue.

ONTARIO NURSES' ASSOCIATION

Ms. Lynn: The Ontario Nurses' Association is a union which represents more than 45,000 registered and graduate nurses employed in hospitals, nursing homes, homes for the aged, public health units, Victorian Order of Nurses, medical clinics and industry.

As the voice of these nurses, ONA welcomes this opportunity to express its views about the amendments to the Pension Benefits Act. Pension is a critical issue for our membership. As recently as January of this year, in a membership questionnaire on bargaining objectives, pension ranked as the number two priority just behind increased salaries.

This union's first major concern is the lack of mandatory inflation protection. For example, over 10 years, a three per cent annual inflation rate would erode the value of a pension by almost 26 per cent. There can be no justification for allowing the standard of living of retired workers to decline rapidly throughout retirement. Without mandatory inflation protection, the government is simply relegating pensioners to poverty.

ONA's second major area of concern is that this bill takes no steps to prohibit employers from removing surpluses from ongoing pension plans in the form of reduced contributions or contribution holidays. For example, the hospitals of Ontario pension plan uses some of the plan surplus to provide premium holidays and a continued reduction of employer contributions. Since pensions are actually deferred salary, we believe surpluses must be used to improve plan benefits for current and retired plan members.

The third concern of our union is the joint co-management of all pension plans. Since, as we have just stated, pensions are a deferred wage, we firmly believe that it is a fundamental right of employees to have an effective say in the management of their pension plan. Token representation on an advisory pension committee is not sufficient. The only way to achieve meaningful worker representation in the administration of pensions is to require that all plans be administered by a committee or board of trustees, with at least one half of the representatives being plan members, ensuring meaningful worker participation is a critical cornerstone of pension reform.

Our union also seeks provision in the bill for the actual transfer of earned pension credits. This is a very important issue for our union, as

nursing is a very mobile profession. About 40 per cent of our members have been in their current jobs for less than five years. Our members are being penalized simply because they are employed by various employers throughout a lengthy nursing career. Their earned pension credits should transfer with them from one employer to another.

1400

With nearly half our members working part-time, the provisions in Bill 170 are of great concern. Currently, part-time nurses are excluded from the Ontario municipal employees retirement system plan while the hospitals of Ontario pension plan allows participation, but only if the entire bargaining unit enrolls. Our position is that the part-time nurse should be eligible to participate by choice.

In closing, this union must state its profound disappointment with the decision to maintain the current level of benefits under the Canada pension plan and the old age security. The only real mechanism for ensuring an adequate guaranteed income for all of Canada's elderly, now and in the future, is through an expanded social security system. The proposed reforms to employer-sponsored pensions will only have full impact on pension income when new entrants to the work force reach retirement age. Without significant amendments to this bill, the public will be left with a serious lack of confidence in the system of employer-sponsored pensions.

Thank you for this opportunity to appear before this committee, and we would now be pleased to answer any questions.

Mr. Chairman: We were awarding prizes this morning for various items, but yours certainly wins for brevity and does sum up your situation very well.

Do we have any questions? If we do not, we are in trouble.

Mr. Lupusella: On page 4 of your presentation, maybe you can give us more explanation about the numbers you provided to us regarding a nurse's normal basic monthly pay of \$2,653.77. That is the total amount of money earned by a nurse, right?

Ms. Beggs: That is right.

Mr. Lupusella: And the nurse's monthly retirement income, the deduction is from this pay of \$2,653.77, or is it something extra that has to be paid into the retirement income?

Ms. Beggs: If you look at the end of page 2 and all of page 3, that shows you where the calculation of the \$745.92 comes from. The \$745.92 is indeed the total monthly retirement income of the hospital nurse. What the calculation on page 4 is showing is the reduction from what the nurse earns as an active-duty nurse compared to what she gets as a retired nurse. She is losing \$23,650 a year in income when she retires. From an active nurse to a retired nurse, her income drops that much.

Mr. Lupusella: Why are you including the old age security monthly income? This is a pension one is going to get at a time when one retires. Why do you calculate such amount and consider that amount as a lost benefit when--

Ms. Beggs: No. What we have done is show you the difference between what an active-duty nurse earns today--well, in 1985, because that is the most

current statistic--when she is at work, versus if she were to retire, so her entire income would include OAS and CPP plus her HOOPP.

Mr. Lupusella: Are you knowledgeable about Bill 170?

Ms. Beggs: Yes.

Mr. Lupusella: I have to find the section where I would like to ask you a question.

Mr. Chairman: Are there any other questions in the meantime?

1410

Mr. Lupusella: On the explanatory notes of Bill 170, number 10 states, "Employers' contributions must provide at least 50 per cent of a pension earned after December 31, 1986." Then, when we go to subsection 40(3), we see a different version. The explanatory note talks about employers' contributions, while subsection 40(3) talks about members' contributions. Can you comment on this different language which Bill 170 uses? Do you have a copy of the bill?

Ms. Beggs: No, I did not bring one with me.

Mr. Lupusella: Maybe I should direct this question to the staff of the ministry. Can I get an explanation of the difference between employers' contributions and the reference in subsection 40(3), where it talks about "a member's contributions"?

Hon. Mr. Kwinter: I can explain that to you. When you look at the explanatory notes, under 10 it says, "Employers' contributions must provide at least 50 per cent of a pension earned after December 31, 1986."

Mr. Lupusella: That is clear.

Hon. Mr. Kwinter: Yes. I am sure you know that there are some plans where there are not contributions by employees. There are some where the employer makes all the contributions. There are some where there are various arrangements. Under this act, an employer must make a minimum contribution. When you look at subsection 40(3), in order to put that into effect, it says an employee may not make more than 50 per cent. It is the same thing but coming the other way: on one side it says the employer must make 50 per cent; this one says an employee may not.

Mr. Lupusella: When the employee is going to apply this discretionary power that he may not--

Hon. Mr. Kwinter: The employer has no discretionary power; he must make at least 50 per cent. As I say, depending on the plan, some employers provide 100 per cent, and anywhere in between, to a minimum of 50 per cent. That is what is covered.

Mr. Lupusella: Okay. Thanks.

Mr. McClellan: I cannot remember where the part-time section is. Can the minister or one of his staff remind me what section of the bill deals with part-time eligibility?

Mr. Kaye: Section 32.

Mr. McClellan: Thank you. I want to ask the ONA deputation about their section on page 11 dealing with part-time eligibility, because I am not quite sure I understood their recommendation. I gather you are saying the use of 35 per cent of the yearly maximum pensionable earnings is going to be unfair for your membership. A number of people have made that point. An alternative suggestion that a number of delegations have put forward is criteria based on hours worked. Is that a difficulty for your profession?

Ms. Slattery: Yes, it is. I think there are a variety of major facets here that relate to the union and may or may not relate to other interested and concerned parties. We tell you that 98 per cent of our membership and, indeed, 98 per cent of our professional body in and out of the union, are women. We call to your attention that some 10 years ago, the initial pension reform was initiated to alleviate the poverty of elderly female Canadians.

Having said that--and there is no larger group of women anywhere in the province than the nursing population--we bring to your attention that approximately 42 per cent of our membership are part-time. We are not the only people who take advantage of this. You read your newspapers; you know there is a nursing shortage. Hospitals have historically utilized the part-time worker to meet the needs of the institution. It is also nice from a managerial point, because a part-time worker takes considerably less benefits.

We are saying that when these part-time workers retire, they retire now as Canadian women on pensions in a system that has actively demonstrated their eagerness to care for the elderly and to pay attention to women's issues. What we want is for our members to have the option to choose to become part of the pension plan in spite of their part-time status. Now they can, if all do. The average woman is not much different than the average man in that it is hard to get all of them to agree on anything at one given time, especially when it relates to money. So we believe that our part-time membership should have the individual option to take advantage of this protection for their declining years, which they only have now if the group opts for it. We think it should be an individual option.

There is another point, which I am sure relates to others, but we are quite strong in our desire to see this bill amended somewhat to meet our needs; that is the mobility or portability of pensions. Lately, if the husband works and the woman can get a better job someplace else, the husband might move, but historically speaking and still in some areas, if the husband moves, the wife and the children move with him.

Having said that, the woman, as a nurse, has no difficulty getting employment because there is a nursing shortage and it is a skilled profession, but she cannot take the pension with her. It is not fair, in a system that has only recently come to recognize the work and the equality rights of half of the population, to deny them the portability of their own pension, because statistics tell us that the women, frail as they are in their youth and early years, seem to have a capacity for endurance and we all live about 10 years longer than this fine assemblage. So we wish that woman could take her pension with her, in the very likely event that she will outlive her prince.

Mr. McClellan: I wish somebody could do something about mortality tables.

Ms. Slattery: Well, I am telling you the woman, physiologically, is just further advanced on the developmental scale.

Mr. McClellan: That is what I am told. I understand the point you are making and I thank you for making it clear to me. Do you accept at all the validity of the concerns that have been raised about the use of 35 per cent of yearly maximum pensionable earnings as being perhaps a barrier to low-wage part-timers? The concern is that a number of people would be excluded.

Ms. Beggs: The 35 per cent would exclude a number of our part-timers. We have a lot who are one and two tours a week and could not meet that rule.

Mr. McClellan: You would not have a problem if there was an attempt made to devise another criterion that was based on time worked. I hear what you are saying about individual choice.

Ms. Beggs: Our preference and our position is, regardless of hours or earnings, they should have an option. The hours do exactly the same thing as the money difference; it still cuts our people off. If you choose 700 or 1,000, we are still cutting off the one- and two-tour-a-week nurse.

Mr. McClellan: You are just saying they should be allowed to join without any criteria.

Ms. Beggs: That is right.

Mr. McClellan: Okay.

Ms. Slattery: The practical reality of it is that they are a large segment of the female population and do not understand--as men have for many years--the worthwhile activity of contributing to a pension plan. Where you see single-parent families--in many instances single-parent families headed by single women--in a general movement of society into a different mode of normalcy, whatever normalcy is, I think you will see in the next 10 or 15 years women wanting and choosing to exercise this option. They have not in the recent historical past, but I believe they will.

Mr. McClellan: Can I ask the minister what the thinking was in choosing the YMPE, or any criteria, as a kind of cutoff for determining the eligibility of part-timers?

Hon. Mr. Kwinter: I stand to be corrected by the staff, but I know that in many of these things, the main criterion was a matter of someone coming in. I understand--this was a question I was going to ask from your presentation--you are saying there should be no qualification; if they are part-timers, the OMERS should allow them in, which they do not at all now, and the HOOPP will only allow them in if everybody agrees. Is that right?

Ms. Beggs: Right.

1420

Hon. Mr. Kwinter: What you want is both those restrictions removed, and also the yearly maximum pensionable earnings limitations removed if they want to do it.

I think it is primarily a matter of administration. Mrs. Salamat, is that the rationale behind it?

Mrs. Salamat: The nurses' association raised a couple of points, one being that each member or each employee be given the opportunity to join that particular plan. The legislation would provide for that. Section 32 of Bill 170 provides that each employee of the class of employees for whom a pension plan is provided is eligible to become a member. Membership is not forced on the individual; therefore, the member would be able to opt into that plan.

The other point raised was with respect to portability. Once they earn the deferred pension, employees will be able to take that pension with them. The pension could be transferred into another employer's pension plan, into a registered retirement savings arrangement, or an annuity can be purchased from an insurance company.

With respect to more eligibility criteria, for part-timers that certainly could be done by the plan itself. For example, the hospitals of Ontario pension plan can say all employees are eligible to join the plan without any earnings criteria, or it can also require that each and every member join the plan.

We are just setting preliminary standards here, and I think that covers the point.

Interjection: It does not explain why.

Hon. Mr. Kwinter: I think the question Mr. McClellan was asking is, why is there a minimum standard set?

Mrs. Salamat: The 35 per cent of the yearly maximum pensionable earnings? Okay. In discussing the earnings criteria as opposed to the hourly criteria, one looked strictly at bringing people into pension plans who had a durable relationship with that employer and, second, that by bringing the individual into the pension plan, there would be the ability to receive net benefits from being in a pension plan. In other words, one did not want individuals to get benefits from pension plans which otherwise would be payable through some of the earnings-related programs, such as the guaranteed annual income system and the guaranteed income supplement. Some models were done, and 35 per cent was felt to be an appropriate cutoff point, recognizing that plans can bring in employees at an earlier time.

Ms. Beggs: I would like to make a couple of comments in response to what Mrs. Salamat said about section 32 and the portability question. Although the minimum of 35 per cent of YMPE is there, we all know for a fact that if that is the minimum standard, that is what is going to be the standard, and we are going to have a hard time in plans like HOOPP and OMERS, particularly in HOOPP, where at this point in time, unless the legislation changes it, we are a token representative on the advisory board and, as a token, it does not matter what we want, we will not get it. The 35 per cent of YMPE will be what is.

We are saying that unless there is legislation to ensure that there is no discrimination on the part-timer, there will be discrimination there. It behooves the government to make sure there is not, we would suggest.

On top of that there is the portability question. Our point is that, although the bill speaks in many parts about terminating employees, it does not force a new employer to accept the pension, and that is what the issue is. We have to be able to have the new employer take the pension of the nurse leaving employer A and going to B. The B employer must accept that.

Mrs. Salamat: I understand there are reciprocal agreements between nurses' associations in Ontario and elsewhere that would permit that. You are right; the legislation does not force a new employer to accept the funds.

Mr. Chairman: Are there any other questions?

Mr. McClellan: I am glad you raised that. It is the first time that that point has come up and I appreciate your pointing it out.

Mr. Chairman: Thank you very much for your presentation.

Ms. Slattery: Thank you for allowing us to speak to you.

Mr. Chairman: The next presentation is from the Plumbing and Pipefitting Workers' Local 67; Mr. Tweedie and Mr. DeLisser.

TRUSTEES OF THE PLUMBING AND PIPEFITTING WORKERS' BENEFIT PLANS

Mr. Tweedie: My name is John Tweedie. I am the chairman of the trustees for Local 67 in Hamilton of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada. This is Phil DeLisser, the administrator of that pension plan.

Do you want me to read this?

Mr. Chairman: Go ahead, please.

Mr. Tweedie: Our brief is addressed to the standing committee on general government on Bill 170, An Act to revise the Pension Benefits Act. The heading lists all the trustees, which is myself, Johnston Tweedie; Victor Langdon; David Lees; William Martin; Dirk Rathe; Roderick Simpson and James Wilson.

We, the above mentioned, are trustees of a multi-employer defined benefit pension plan.

We have reviewed the consultation draft of the proposed regulations under Bill 170, An Act to revise the Pension Benefits Act, and feel that some areas require clarification, if not amendments, prior to the act coming into force.

First, we would like to inform the committee that we are in favour of most of the act's provisions, especially in the areas of vesting requirements, portability and reciprocity of benefits, disclosure requirements, joint and survivor pension benefits, and establishing entitlement to the interest earnings or surplus of a pension fund.

The latter does not affect us. As sole labour trustees of our pension fund, we are responsible for the administration and management of the fund, ensuring that interest earnings and surplus are used for the good of the plan beneficiaries.

The honourable Mr. Kwinter's comment that pension benefits be treated as deferred wages should encourage plan sponsors to return their surpluses to the plan beneficiaries.

We would like to address the following concerns to the committee:

1. Termination by member: Clause 39(1)(a) states that "A person who is a member of a multi-employer pension plan is entitled to terminate his or her membership in the pension plan if no contributions are paid or are required to be paid to the pension fund by or on behalf of a member for 24 consecutive months or for such shorter period of time as is specified in the pension plan."

One of the conditions for participating in the UA Local 67 pension plan is that the participant must be a member in good standing in the local union. Being a journeyman local, members from time to time work for long spells in other UA locals both in Canada and the United States. Most of the time there is a reciprocal agreement covering the member. However, there are times when the local union does not have a pension plan, and therefore there will be no reciprocation.

Also, due to the unpredictability of employment within the plumbing and pipefitting industry, members may work in other occupations during times of severe unemployment. These members retain their membership within the local, and the trustees feel that unless the member terminates his or her membership in the local, he or she should not be allowed to terminate his or her membership in the pension plan.

Do you want me to go on again, carry on?

1430

Mr. Chairman: Please complete your brief and then we will have questions, if you do not mind.

Mr. Tweedie: Mandatory inflation protection and indexing: Although inflation protection and indexation of pension benefits have been put to a subcommittee and excluded from the current legislation, we feel it should be addressed. We feel that mandatory inflation protection could have an adverse effect on plan beneficiaries in the long run. It may force private plan sponsors to opt for money purchase plans, introduce deferred profit-sharing plans or not introduce a pension plan at all.

In the plumbing and pipefitting industry of Ontario, where benefits are not negotiated separately but are part of the total wage settlement, the cost of indexation of benefits is shifted from the plan sponsor to the plan beneficiary. The net result is that the cost for indexing pensions would have to be funded from reducing the value of the current service benefit promised to the member or increasing the hourly rate of contribution, thus reducing the member's take-home pay.

We, the trustees of Local 67 pension plan, are not sure that our retirees would agree to mandatory indexation if the cost for this benefit is going to be borne by the active member.

We recommend that the inflation protection of benefits be made voluntary. Most labour unions have control over their pension fund assets. At the end of each actuarial valuation report, most of the earnings in excess of the funding requirements are used to upgrade or improve members' pension benefits, both active and retirees. This seems to be a more realistic method of improving benefits, as the cost for improvements is derived from actual earnings as opposed to committing increases based on future earnings.

In summary, we respectfully inform the committee of the following:

1. All contributions to our pension fund come from the negotiated wage settlement.

2. Any increases in contribution during the collective agreement period--two years--to fund increased plan costs as a result of Bill 170 have to be passed on to the member, usually as a reduction of the hourly wage rate.

3. Because of the wide range of changes proposed in Bill 170 and their cost implications to plan sponsors and, in some cases, the beneficiaries, no one, including the actuary, is prepared to commit a final cost liability to our fund. This leaves us, the trustees, with a lot of "ifs" and "whens" in our communications to the membership.

4. Multi-employer plans' needs have to be specifically addressed in the bill and more consultation is required with interested groups from the multi-employer organizations, both labour and management.

Finally, as elected trustees of the Local 67 pension plan, we would be falling short in our duties if we allowed this legislation to pass without presenting our case to this committee.

Mr. Chairman: You have done that and you have done it well.

Mr. Tweedie: Thank you. I had a little hesitation at first.

Mr. Lupusella: On page 2 of your presentation, in relation to the issue of termination by a member, you stress subsection 39(1), which states that,

"A person who is,

"(a) a member of a multi-employer pension plan:...

"is entitled to terminate his or her membership in the pension plan if no contributions are paid or are required to be paid to the pension fund."

You also stated at the end of this paragraph that "These members retain their membership within the local, and the trustees feel that unless the member terminates his/her membership from the local union, he/she should not be allowed to terminate his/her membership from the pension plan."

Given these two parameters, I would like to computize a hypothetical situation of one of your members who has been working for any kind of company that had this multi-employer pension plan, and the employer was making contributions into the plan. At a certain point in time one of your members got injured and he has been away from the work force for two or three years. He is still a member of your union, but there is no contribution into the fund. When he is able to go back to work after two or three years there is no employment. What is going to happen to his plan?

Mr. Tweedie: His pension would still be carried on because, as we stated, our pension is on the actuarial value. The surpluses go back to the membership. In actual fact, this July we go into our third year for valuation to the membership and then we will give them an increase on that surplus returned to the members. His pension would still be active within that plan.

Mr. Lupusella: But as long as he is a member of the union.

Mr. Tweedie: That is drawn up in a trust agreement on the pension. In order to be a member of the pension plan, you must be a member of the union.

Mr. DeLisser: During the period that he is away from work, he would still enjoy any increases or improvements from the plan in respect of earnings from that valuation report. His actual benefits could still be improving even though he is not working, gaining from the net contributions of the other members who are working and the surplus generated from the investments of those funds.

Mr. Lupusella: I understand that part. What I do not understand is this man ceases to be a member of the union and he has been off work as a result of an injury for two or three years, and after two or three years maybe he did not have the money to pay the union fee and so on and he is not a union member any longer. What is going to happen?

Mr. DeLisser: If he is vested in the plan, his benefits would be retained for him as a deferred pension to retirement. He would not lose the benefit.

Mr. Lupusella: In case this individual is going to have a full recovery from that injury and he becomes a member of the union again and the union is going to find a job for him in another place, what is going to happen to the plan?

Mr. DeLisser: His benefits would be reinstated as promised.

Mr. Lupusella: Is there any loss during that period of time?

Mr. DeLisser: There would not be any loss. In actual fact, if a member is injured, there are avenues in the union to continue membership dues for sick members without payment of the actual dues. I think the likelihood of his being terminated from the union because of an injury is--I would not say it is remote, but I think it is unlikely.

Mr. Lupusella: I have seen some cases that show the opposite, but I do not want to argue about it.

Mr. Davis: I would just like you to express your feelings on two questions. One, I understand in the act that either the commissioner or his designate has the power to come in and seize your records at any time, to take them away or examine them while they are there without a warrant from the courts. How do you feel about that?

Mr. Tweedie: Let us face it, we do not like any police action in any way whatsoever. I think we are in enough of a police state without them coming in, but as far as any feeling that there may be anything wrong going on with the plan, I would have no problem if anybody came and asked to see the books, because we go through the proper procedures. We have an auditor. We have money managers. We have an administration and they all go through the books.

The trustees also get a report every three months from the money managers. We meet once a month with an administrator in attendance. We meet with our auditor twice a year. Basically, the trustees are on top of everything that has happened within the plan. We would have no problem with anybody inspecting the books as far as anything like that is concerned. The only problem I would have would be because it would be like a police state coming in and saying, "Right. I am taking your stuff away."

Mr. Davis: Mr. Chairman, I did not say that we are becoming a police state, but I would like to--

Mr. Chairman: Neither did he. He said he would be concerned if we were to become a police state.

Mr. Davis: I know he did not. I think we are on the way. Anyhow, I have one other question I would like to ask about this. I cannot find it in the regulations, but I understand that one of the requirements would be that each year people responsible for a pension plan must inform their members what they will do with surplus moneys if the pension plan were to fold. They have to do that each year, if I am correct. How do you feel about that, that each year you have to indicate to your members what you intend to do if the pension plan folds, even though you do not intend it to fold?

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Mr. Tweedie: That is each year. Once again, that is part of our responsibility because, basically, we give a quarterly report to each member, actual hours that the man has worked, who he was working for, how much was paid into his pension and how much he is getting for his pension, both past service, future service and at the present time. Basically, in a year, a guy knows exactly what he was getting, but you would have to go into an actuarial value over that period if you were going to solve it and you are not going to solve it within one month. It is going to take a couple of years before you solve a pension plan.

Mr. Chairman: We have heard a lot of briefs, but everyone seems to bring to us a different perspective. That is interesting.

Mr. Tweedie: Many voices.

Mr. Chairman: That is right. It is important. I do not want to perpetuate an argument with Mr. McClellan, but we talked yesterday about what would happen to the committee and its endeavours when the House came back. We did not take time to mention that a new committee has to be struck. When we complete this endeavour, the committee disappears. We mentioned that we would meet on April 30 to order our agenda for future weeks. We can only meet on April 30 if the House leaders strike the committees, which may or may not be likely.

The reason I raise this is that our research staff would like as much time as we can give them, especially when this is Easter weekend. We would not want to spoil their whole weekend. The earliest a committee could meet for organizational purposes would be April 30, but only if the House leaders agree that should happen. It may well be that it will be a week later before the committees are struck. I do not know the answer to that, Mr. McClellan. This is just to clarify what we talked about yesterday because I think we were a bit premature in saying that certain things would happen. If you accept that clarification--

Mr. McClellan: Sure. My assumption is the committees will be formed in the first week. It may well be that the government in its wisdom would prefer to have this bill dealt with in committee of the whole House. It would give more legislative time to the clause-by-clause, but that probably is something the government House leader or the minister will need to work out. They have to sort this stuff out.

Mr. Chairman: It all has to be ordered. My only reason for raising it was research time, but also there is what the people who are making presentations might think. I understand there is another scenario around which says that the government does not want to have committees sitting the first two weeks of the Legislature; in other words, the two weeks during which the throne speech is being debated. There are an awful lot of ifs and buts in that whole thing, but certainly the earliest that a committee, which might not include any of us, could meet would be April 30, if struck by the House. Otherwise, it will be some time after that.

Mr. McClellan: Right. Go with the flow.

Mr. Chairman: Agreed?

Mr. McClellan: Agreed.

Mr. Chairman: The next presentation is from the Ontario Confederation of University Faculty Associations; Mr. Starkey and Mr. Epstein. Gentlemen, welcome and please proceed.

ONTARIO CONFEDERATION OF UNIVERSITY FACULTY ASSOCIATIONS

Mr. Starkey: I am John Starkey, the president of the Ontario Confederation of University Faculty Associations. On my left is the executive director, Howard Epstein.

Although it is outlined on the first page of our brief, I should maybe explain that the Ontario confederation represents 12,000 professors and librarians in the province. Rather than reading through the brief item by item, we would like to concentrate on a couple of particular issues. Of course, we are here to answer questions on any point made in the brief.

By way of introduction I would like to say that, by and large, we are very pleased with Bill 170. In particular, we certainly commend the drafters of the bill for their attention to improvements for women employees, for providing for early eligibility for employees--particularly some part-time employees--to join pension plans, for the provisions for earlier vesting and locking-in, for improvements in joint and survivor benefits and for some of the improvements in portability.

Our brief contains detailed comments on areas of concern to us in the bill and these are the issue of indexing and the issue of portability. Although I mentioned we are generally pleased with the fact that portability was addressed by the bill, we remain concerned that the provision, as it now stands, allows for portability only in the event that the plan of the new employer will accept the contributions of the employee.

We would like to suggest that the legislation be strengthened in that area and also that thought be given to an alternative, that of providing a parking mechanism for people between pension plans, so that they can park their plan in the event that the new employer will not accept them as members of its plan. Individuals would be able to park their plan pending subsequent retirement. We think that is a particularly important consideration for employers who are changing from a defined benefit plan to a money purchase plan or vice versa.

We also have some comments in our brief regarding fund surpluses. We would like to see an increase in employee control over their plans beyond that

provided in Bill 170. We would also like to see an increase in flexibility for retirement, especially in view of the Charter of Rights, which, as you well know, does not provide for discrimination on the basis of age. In the event that the provisions for mandatory retirement are changed, there would be need for some thought to be given to increasing flexibility of pension funds.

An issue that is not addressed in the bill at all, but which we consider of some importance, is the issue of ethical investments; the right for employees in a pension plan to have some control over the disposition of their funds. This, of course, stems in large measure from our view that the pension funds are in fact deferred wages of employees. I will ask the executive director to speak to this issue specifically. He has some additional information that is pertinent.

Mr. Epstein: We make our submission with respect to ethical investment primarily because it is an item that Professor Starkey identified correctly as not having been addressed in Bill 170. We have been of the view for some time and have tried to persuade the Minister of Financial Institutions (Mr. Kwinter) and the Attorney General (Mr. Scott) that the province should take upon itself a leadership role in bringing forward the opportunity for employees to make those kinds of decisions about the investment of their funds.

The closest the province has come so far is in two measures we identify in our brief. One is Bill 195 which the Attorney General brought forward in February to deal exclusively with the issue of South African investments. It is not wider in its scope. The other is information we have just received from the Pension Commission of Ontario that indicates it is prepared, in revising its regulations--that is, under the power it has to put in place regulations to govern the kinds of investments pension funds can make--to have a rule that would allow ethical investments to be made.

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The proposed regulation is quoted in full at the top of page 4. "Plan sponsors or administrators may, if desired, make investment decisions based on ethical or moral considerations, provided that the standard of prudence is met." We have some difficulty with that phrasing. It seems to me that both the South African legislation, Bill 195, and this proposed regulation go some distance towards meeting our concerns. However, we think it does not go the full measure and we invite you as a committee and Mr. Kwinter as the minister to turn your minds to the questions of ethical investments and take it as a subject for research.

We are particularly concerned because the marketplace seems now to be moving ahead significantly, and trustees of pension plans are in some doubt about whether they can use a vehicle that has been developed in Canada following the lead in the United States, where ethical investment mutual funds have existed for quite some time. Now there are four funds in Canada of which we are aware. Canada is following behind the United States, where there is a multiplicity of these funds; none the less, they have been established here, and under the common law and the acts as they exist right now, there is some doubt whether the trustees of pension plans can even invest in these funds.

We would tie it not exclusively to the question of the mismatch between the powers of trustees and what the market has available, but also to the question of who would have the power to control the trustees, to direct the trustees, to tell the trustees how the investments should be made. Hence, we

tie it to our view that since in our opinion pensions are deferred wages, it is the employees who should have final say in how their investments should be used.

One can well imagine groups that would not wish to see their investments made in companies that produce armaments, alcohol, tobacco or, the legislated example, that have dealings with South Africa. It is also quite easy to imagine groups that are unionized, say in the construction industry, that would not wish to see their pension funds used to support people in the construction business who have a policy of not having a unionized work place.

There is a whole variety of possible forms of ethical, socially conscious investment that employees may wish to see made, and under the law as it stands now, they are prohibited from doing this. I am suggesting this is an omission from Bill 170 and that it is something this committee might wish to turn its mind to.

Actually, if I may, I have another handout. I do not have 20 copies as I have 20 copies of my brief, but what I do have are some copies of title pages from the four funds I mentioned that exist in Canada. You might wish to have a look there as well as at some letters we have exchanged with the Attorney General about Bill 195.

Mr. Chairman: If you could leave those with Debbie, she can make sure we get copies of them. Does that complete the comments you wish to make?

Mr. Starkey: It does.

Hon. Mr. Kwinter: I would like to address the issue of ethical investments and tell you the problem we have. It really is something--and I take your advice--that we have to research and we are doing exactly that.

The problem that has been raised by the Attorney General is that we as a collective society or those members of a particular pension fund can decide, for whatever reason, that they want to deinvest in South Africa, or as you suggest, sell their shares in a company that manufactures tobacco, alcohol or anything else. His problem is that notwithstanding the desire, he has some legal problems. There are groups out there in which there are no people per se; they are estates that are being administered and they are the beneficiaries under these pension plans. There is really no one to turn to for direction and the only mandate that trustee has in administering the estate is to maximize the return to the estate. What is happening is that if it means divesting at a loss, they are in trouble. They are not serving the beneficiaries because they are not maximizing the return.

That is why, if you see the statement that is made, it says, "Plan sponsors and administrators may, if desired, make investment decisions based on ethical or moral considerations, provided that the standard of prudence is met." That is to offset any challenge to what has happened, which would then turn into a whole problem. It is a problem we are very much aware of and we are trying to come to some resolution.

Mr. Epstein: I am glad to hear that there is a great deal of interest. I think the question is indeed one that would bear a lot more research. However, the legal point you raise is not one that affects pension plans. It may well affect charities that are set up as trusts or private trusts of a very special sort. On the other hand, with respect to pension plans, not all of which have to be set up as trusts--they can be set up under

an insurance scheme, but they are primarily trusts, you are quite correct--special legislation or regulations under the Pension Benefits Act could apply exclusively to pension plans. You do not have to, with one sweep, deal with all kinds of private trusts that may exist around the province. It seems to me the problem you identified is a real one, but it is one that could be isolated from pension plans.

Hon. Mr. Kwinter: We are certainly aware of the problem and are trying to address it.

Mr. Chairman: Are there any other questions? There must be something about a four-day weekend that limits the questioning. If you are on your way to somewhere, I guess we can let you go. Thank you very much.

The problem may be, we do not have the next presenter. Do you want to make a presentation, Ross? We have two more groups, the Ontario Advisory Council on Women's Issues and Mr. Danyshyn, a private citizen.

The committee recessed at 2:56 p.m.

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Mr. Chairman: Perhaps we can call the meeting to order again and hear from Mr. Danyshyn, who has some points he wishes to bring to our attention, but nothing in writing. Please proceed. Thank you for coming early. You can sit down. In fact, it is better to sit down because we are recording what you say.

S: DANYSHYN

Mr. Danyshyn: Gentlemen, I am coming here as a private individual, even though I do have standing in a committee that has to do with pensions in a specific local.

I would like to speak on about three different subjects, but mainly on two of them. One is survivor benefits. The survivors of covered members must be given a choice regarding the manner or form in which they receive a payout on the death of a covered member.

As an example, a lump sum payout may be indicated by a pension plan or its administrator. A widow or survivor should be given a choice to receive it as a lump sum, where it becomes immediately taxable, as a deferred pension, as a continuing pension or as a rollover into a registered retirement savings plan type of investment.

The reasoning behind this request is that some survivors may not be able to properly or adequately handle such large lump sum payments and may eventually fall back on government and taxpayers for increased support at a later date.

The second item I have to present is a matter of taxation. There should be a limit set on a maximum percentage of a pension fund that can be held as reserves. Excessive reserve buildup does not add to increasing benefits in the hands of the pensioners, where the money again becomes taxable to support the needs of government, both provincial and federal.

My own personal feeling, as a private pension fund contributor and as a private taxpayer--perhaps I should explain my position as a private pension

fund contributor in that a certain amount of my pay goes into a pension. An employer also puts in a certain amount, but I do contribute something to it. It is not something that is funded entirely by the employer, regardless of whether it is a large amount or a small amount.

I will just carry on from there. My own personal feeling, as a private pension fund contributor and as a private taxpayer, is that reserves should be kept to a maximum of 10 per cent of the total market valuation of any pension fund where the pension fund is fully funded.

This limit would induce trustees and actuaries to increase benefits, such as cost-of-living increases, both to future pensioners and those already on pension. It is my contention that it is the role of government and also of the Pension Commission of Ontario to see that excessive amounts of capital are not hoarded by pension trusts where they are free from normal taxation.

It is the duty of this provincial government to see that funds provided to pay pensions are so used and so used efficiently. If excessive funds are held in reserve, it becomes a burden on the pensioners, on those paying unnecessary excess funds into pensions and on the general taxpayer in that large sums of investment capital held as reserves are not paying a fair share of the general taxation.

I would implore the committee and the ministry to do their utmost to see that pensioners get all they are entitled to just as soon as they are entitled to it, as reflected in proper actuarial calculations, rather than to have excessive amounts build up for the future and possibly still be left with excessive reserves.

I would also urge this committee to provide, in the pension legislation, a requirement that any member covered by a pension plan is automatically eligible to attend annual or regional meetings of trustees where the plan administrator and/or actuary is present so that he may question these people in regard to the plan, the covering trust agreement, actuarial figures and assumptions, investment policy and general policy with regard to further improvements or amendments to the pension plan.

I further urge that all pension plan members be notified of these meetings and the agenda of the meetings, and request that it be made mandatory that members may not be excluded from these meetings except at their own discretion or choice. Thank you.

Mr. Chairman: Thank you, sir. If you do not mind a question or two, is that okay with you?

Mr. Danyshyn: Yes, that is fine.

Mr. Lupusella: Maybe I missed the point, but I heard you are a pensioner and you are still contributing in the plan.

Mr. Danyshyn: I beg your pardon? I am sorry, I am a little deaf, sir.

Mr. Lupusella: Unless I am wrong and I did not follow your presentation, you told us you are a pensioner.

Mr. Danyshyn: No, I am not a pensioner. I am still a worker.

Mr. Lupusella: Okay, thank you.

Mr. Danyshyn: I may be dressed up, gentlemen, but that does not mean I am a pensioner.

Mr. Lupusella: The other point I was planning to ask you is that the employees should have a say on the investments of the plan, and when trustees call meetings you should have a say. If that is the case, what kind of power would you like to have in order to have your voice heard? I would not like to go to a trustee meeting where they discuss the future of the plan, the investment of the plan, and I just have to raise questions. There is no mechanism in what you suggest to us should be implemented in this bill in order that your voice is going to be heard.

Mr. Danyshyn: All I can do is refer to the plan that I myself am a part of. This particular plan has three trustees on the company side and three trustees on the union side. These gentlemen are perfectly capable, along with the actuaries and the investment manager and general manager of the fund, to carry on the day-to-day activities and carry on their monthly business. I have no intention of entering into everyday business, nor do I feel that any member should be able to do that at his own behest.

What I feel every member should be able to do is exactly the same as can be done in mutual insurance companies where every member is a shareholder, and in a union plan they generally are to an extent. As a shareholder, he should be able to have a say and to question the authority, the direction that the fund managers, etc., are taking and get some decent answers from them. I am not suggesting he should be able to be there to needle them, that is not the point, but if he wants information he should be able to get it and be able to criticize it if he feels there is reason for criticism. Just democracy, gentlemen, that is all I asking for.

Mr. Lupusella: I was planning to give you more than democracy.

Mr. Danyshyn: The reason I brought this up is that at one time, approximately two years ago, I myself was restricted from going to just such a meeting. I think any member, any participant in the plan, should be able to ask questions of the people who control the plan just as the management of an insurance company is subject to its shareholders. In a mutual company, those shareholders are the people who have policies in the company.

Mr. Chairman: You are aware of the sections of the bill which provide for disclosure.

Mr. Danyshyn: Yes, I am, but I do not think it goes quite far enough, sir.

Mr. Chairman: Okay, thank you. Are there any other questions from anyone? Thank you very much. We are way ahead of time. We are trying to persuade the Ontario Advisory Council on Women's Issues to let us enter their submission into the record as evidence, opinion or whatever, but we have not got that. We have asked them to come immediately and they say they cannot come until four o'clock. I am not sure, but maybe Mr. Campbell will be here.

Mr. Campbell: Do you want a presentation?

Mr. Polsinelli: I suggest we adjourn until four o'clock.

Mr. Chairman: We could do that, but Debbie is on the phone at the moment to negotiate the situation. Can we shut down the recorder for a few

moments, but please do not leave for five minutes or so to see what is happening, if that is agreeable to the committee. If they agree to enter it on the record, would that be agreeable to the committee?

Mr. Polsinelli: Without a verbal presentation?

Mr. Chairman: Yes.

Mr. Polsinelli: I am sure Mr. McClellan would be happy to accommodate their wishes.

Mr. McClellan: It is a government agency.

Mr. Chairman: They are a government agency so we can have them in at any time to present their views further than we have in print. We might just wait for five minutes or so until Debbie returns and see what the verdict is.

Debbie tells me we cannot make a motion here that it would be a part of the record. I suggest to her that we can.

Clerk of the Committee: I did not say you cannot.

Mr. Chairman: Mr. Guindon moves that the submission from the Ontario Advisory Council on Women's Issues, owing to the fact that we are three quarters of an hour early, be entered into the record as if it had been presented and form part of what we are considering.

Motion agreed to. [See appendix attached].

Mr. Chairman: I thank everybody for their indulgence over the past two weeks, particularly the attendance of the minister.

Hon. Mr. Kwinter: Thank you, Mr. Chairman, I was glad to do it.

Mr. Chairman: It is the first time we have had a lady on the committee, be it only for an hour and a quarter, or less. Thank you. Have a happy Easter.

The committee adjourned at 3:12 p.m.

EXHIBIT No. 2/07/086

FILED ON APR. 22/87

ONTARIO ADVISORY COUNCIL
ON WOMEN'S ISSUES

STATEMENT

TO THE

STANDING COMMITTEE ON GENERAL GOVERNMENT

RE

BILL 170 - AN ACT TO REVISE
THE PENSION BENEFITS ACT

APRIL 16, 1987

The Ontario Advisory Council on Women's Issues congratulates the Ontario Government for its leadership in the area of pension reform. We are pleased that many of the recommendations in our 1983 brief on pensions have been incorporated into Bill 170, in particular, earlier vesting and locking-in provisions, coverage of part-time workers, improved survivor benefits, continuation of pension after re-marriage, and the removal of sex discrimination in pension benefits.

However, we wish to raise the following concerns:

Inflation Protection

The Council reiterates its recommendation that a measure of inflation protection be provided by employer-sponsored pension plans, whether through the excess interest approach or by adjustments based on a fixed portion of increases in the Consumer Price Index. Inflation protection is crucial to women's pensions given women's ever-increasing longevity.

Coverage for Part-time Employees

We are particularly pleased that part-time employees will now be eligible to join pension plans. However, we recommend the following changes:

Section 32(3) states that "a pension plan may require not more than twenty-four months of less than full-time continuous employment with the employer with earnings of not less than 35 per cent of the Year's Maximum Pensionable Earnings in each of two consecutive calendar years immediately prior to membership in the pension plan, or such equivalent basis as is approved by the Superintendent, as a condition precedent to membership in the pension plan."

The words "continuous employment" may allow an employer the opportunity to terminate or lay-off a part-time employee just prior to the 24-month eligibility period. Currently many establishments deny benefits to their part-time employees by keeping their hours of work just below the limit. A majority of these workers are women who suffer not only from low pay but from lack of benefits as well.

Therefore, the Council recommends that the word "continuous" be deleted.

The level of earnings qualification of 35% of Y.M.P.E. in the preceding two years will disqualify a majority of part-time employees from joining employer-sponsored pension plans.

Therefore, we recommend that Section 32(3) be amended to "25% of Y.M.P.E."

Also, we recommend that it remain the option of the part-time employee to join the pension plan.

Part-time employees should be allowed continuing access to employer-sponsored pension plans. Therefore, we recommend that the words "prior to membership in the plan" be deleted, and substituted with "before the year in which membership is applied for".

Section 35 states that "an employer may establish or maintain a separate pension plan for employees employed in less than full-time continuous employment if the separate pension plan provides pension benefits and other benefits reasonably equivalent to those provided under the pension plan maintained by the employer for employees of the same class employed in full-time continuous employment."

We are concerned that this section does not ensure that employers are required to set up the same types of pension plans for both full-time and part-time employees. For example, an employer may set up contributory plans for part-time employees while maintaining non-contributory plans for full-time employees.

Therefore, we recommend that where an employer has a non-contributory plan for full-time employees, a similar plan be required for part-time employees.

Joint and Survivor Benefits

Section 47(1) states that "the persons entitled to a joint and survivor pension benefit may waive the entitlement..."

As an additional protection, we recommend that before such a waiver is accepted, a written statement be provided which outlines the exact effect the waiver will have on the pension benefit of each of the spouses.

The Council is concerned that recent statements by the Minister of Financial Institutions regarding the feasibility of inflation protection of pensions, will undermine the Ontario Government's stated strong commitment to inflation protection. If the Government is serious in its desire to ensure that women are not destined to be poor in their older years, it must include inflation protection in any package of pension reform.

The Ontario Advisory Council on Women's Issues urges the Ontario Government to continue working with the federal government to maximize the opportunity for women to obtain pensions in the workplace and at home, and to encourage flexibility in order to accommodate the various roles of women in society.

RECOMMENDATIONS

The Ontario Advisory Council on Women's Issues recommends that:

- 1) A measure of inflation protection be provided by employer-sponsored pensions, whether through the excess interest approach or by adjustments based on a fixed portion of increases in the Consumer Price Index.
- 2) That the word "continuous" be deleted from Section 32(3) in order to prevent employers from laying-off part-time employees just prior to eligibility for a pension.
- 3) That the earnings qualification be lowered to 25% of the Year's Maximum Pensionable Earnings in the two preceding years.
- 4) That it remain the option of part-time employee to join the employer-sponsored pension plan.
- 5) That the words "prior to membership in the plan" in Section 32(3) be deleted and instead read "before the year in which membership is applied for", in order to ensure that part-time employees have continuing access to pension plans.
- 6) That Section 35 be amended to ensure that where an employer has a non-contributory plan for full-time employees, a similar plan be required for part-time employees.
- 7) That Section 47(1) be amended to ensure that before a waiver of joint and survivor pension benefit is accepted by the administrator, a written statement is provided outlining the exact effect the waiver has on the pension benefit of each spouse.

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Anne Rochon-Ford, Toronto
Barbara Stone, St. Catharines
Elaine Todres, ex-officio, Toronto

COUNCIL STAFF

Bridget Vianna, Executive Officer
Lydia Oleksyn, Administrative Assistant
Elayne Ceifets-Osher, Researcher/Conference Coordinator
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